

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 867

UNITED STATES, APPELLANT,

vs.

CONTINENTAL CAN COMPANY, ET AL

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

FILED AUGUST 12, 1963

JURISDICTION NOTED OCTOBER 22, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 367

UNITED STATES; APPELLANT,

VS.

CONTINENTAL CAN COMPANY, ET AL

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

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120—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period November 1956 to May 1957 to the Board of Trustees of Glass Container Manufacturers Institute	512	2160
121—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1957 to September 1957 to the Board of Trustees of Glass Container Manufacturers Institute	519	2169
122—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period October 1957 to May 1958 to the Board of Trustees of Glass Container Manufacturers Institute	525	2178
123—Committee on Market Research and Promotion, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	532	2187
124—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1955 to November 1955 to the Board of Trustees of Glass Container Manufacturers Institute	539	2196
125—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period October 1957 to May 1958 to the Board of Trustees of Glass Container Manufacturers Institute	540	2197
126—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1958 to November 1958 to the Board of Trustees of Glass Container Manufacturers Institute	544	2203
127—Committee on Market Research and Promotion, Subcommittee on Milk Bottle Promotion, Semi-Annual Report of Activities for the period May 1957 to September 1957 Semi-Annual Report of Activities for the period of May 1957 to September 1957 of the Committee on Market Research and Promotion, Subcommittee on Beer Bottles to the Board of Trustees of Glass Container Manufacturers Institute	545	2204

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
128—Traffic Committee, Semi-Annual Report of Activities for the period November 1954 to May 1955 to the Board of Trustees of Glass Container Manufacturers Institute	548	2208
129—Committee on Government-Industry Relations Semi-Annual Report of Activities for the period May to November 1956 to the Board of Trustees of Glass Container Manufacturers Institute	555	2217
130—Committee on Market Research and Promotion, Subcommittee on Beer Bottles, Semi-Annual Report of Activities for the period May 1956 to November 1956 to the Board of Trustees of Glass Container Manufacturers Institute	558	2221
131—Committee on Container Design and Specifications Semi-Annual Report of Activities for the period November 1955 to May 1956 to the Board of Trustees of Glass Container Manufacturers Institute	560	2223
138—"Fifth Annual Consumer Survey on Containers" prepared by Benton & Bowles, Inc., December, 1947 (excerpts)	564	2229
145—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., November 17, 1941 (excerpt)	688	2245
147 & 148—Digest of Recommendations presented to the Administrative Committee of the Research Division of Can Manufacturers Institute on November 17, 1941 by Dr. Miller McClintock, Director	689	2246
156—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., May 11, 1942 (excerpts)	691	2248
158—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., June 1, 1942 (excerpt)	692	2249
160—Financial statement, Research Division, Can Manufacturers Institute, Inc., May 1, 1942-April 30, 1943	693	2251
166—Minutes of a Special Meeting of the Administrative Committee for the Research Division of Can Manufacturers Institute, Inc., December 14, 1942	694	2251

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
170B-178—Proofs of advertisements on "Soft Drinks in Cans" prepared for publication	696	2255
185—"The HE I.S. Glass-Forming Machines", informational booklet	710	2268
235A—Memorandum dated 1/18/54 from CGB to MAH re Narrow Mouth Prices	725	2285
235B—Memorandum dated 3/15/54 from CGB to SLR re Glass Container Price Increases	726	2285
235C—Report of R. M. Koehrman re Sales Policy Meeting July 29 and 30, 1954	727	2286
235D—Report of R. M. Koehrman re Sales Policy Meeting February 23 and 24, 1954	734	2296
304—Pamphlet entitled "Articles of Incorporation and Code of Regulations" of Glass Container Manufacturers Institute, Inc., June 5, 1945, as amended	739	2305
317—Bulletin 30-L, 2d Ed., entitled "Processes for Low-Acid Canned Foods in Glass Containers", by National Canners Association, Research Laboratory, September, 1955	776	2337
318—Bulletin 26-L, 8th Ed., entitled "Processes for Low-Acid Canned Foods in Metal Containers", by National Canners Association, Research Laboratory, December, 1955	821	2382
348—Study of Can Costs versus 1-way Bottle Cost to Brewer, Owens-Illinois Glass Company, dated May 4, 1956, prepared by Glass Container Comptroller's Department	879	2441
348A—Study of Can vs. Glass Prices—Florida Fruit Packs, dated April 1, 1955, prepared by Comptroller's Department, Glass Container Division	884	2443
348B—Study of Quart 1-way Beer Containers, Glass vs. Tin, Owens-Illinois Glass Company, dated June 4, 1956, prepared by Glass Container Comptroller's Department	886	2446
348C—"Sources of Information, Cans vs. Glass Prices—1942 = 1946 vs. 1-1-57", prepared by Comptroller's Department, Glass Container Division, 2/27/57	892	2449
348D—"1-Way Beer Prices", a comparative study prepared by Comptroller's Department, Glass Container Division, April 23, 1958	894	2453
348E—"Cans vs. Jars Price Per Thousand—Ground Coffee," report dated October 21, 1958 by Instant Products Division	896	2454

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
348F—"Baby Foods—Tin vs. Glass", report dated April 16, 1959 by Comptroller's Department	897	2455
348G—Memorandum dated April 27, 1959 from Comptroller's Department, Glass Container Division, re Beer Containers—One-Way Glass vs. Tin	898	2456
348H—Memorandum dated May 6, 1959, with charts attached, from Comptroller's Department, Glass Container Division, re Can vs. Glass Prices	899	2457
349—Report dated April 2, 1958 re prices of containers for detergents and liquid waxes and polishes	902	2459
349A—Memorandum dated March 19, 1959, with tables attached, from Comptroller's Department, Closure & Plastics Division, re detergent containers	905	2461
349B—Report dated October 30, 1957, re prices of containers for detergents and liquid waxes and polishes	910	2466
357—List of Revlon products, March 1958 to October 1959	913	2469
363—List, dated June 21, 1960, of glass container machines shipped by Emhart Manufacturing Company to Hazel-Atlas Glass Company and Hazel-Atlas Division of Continental Can Company	914	2470
364—Letter dated October 21, 1958, from Emhart Manufacturing Company to U. S. Dept. of Justice re inquiry concerning glassware forming machines and related subjects, with attachments	918	2473
400—Memorandum dated January 10, 1954, from Dana Hill to R. G. Fisher transmitting report "Tin vs. Glass—United States and Canada"	967	2519
400A—Memorandum dated November 24, 1947, from R. S. Hatfield to G. H. Muth, transmitting data sheets	979	253
401—"The Packaged Syrups Market"—An appraisal of the Metal Container's Competitive Position—Commercial Research Department, April 1949 (excerpt)	988	2541
402—"The Market for Peanut Butter in Cans"—a report by the Commercial Research Department, November 25, 1952	993	2544

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
404—"Continental's New Savorlock Can", Continental Can Company Products Bulletin from R. D. Cleaves, August, 1956	1000	2553
405—Excerpt of report entitled "Continental's New Savorlock Can" with memorandum dated June 1956 from R. D. Cleaves to Division Managers of Sales and District Sales Managers	1012	2563
405A—Packaging Engineering Report, Progress Report No. 1, dated November 21, 1956, entitled "Test Pack of American Home Foods' Soluble Coffee in Savorlock Cans", with Tables I and II	1018	2567
406—Excerpts from pamphlets issued by Continental Can Company entitled "Continental's Coffee Container—Sales Information"	1023	2575
407—Pamphlet of Continental Can Company entitled "Instant Coffee by Chase & Sanborn"	1028	2581
408—Memorandum dated July 21, 1955, from R. D. Cleaves to P. L. Brachle, Central Division, Continental Can	1045	2591
409—Memorandum dated August 18, 1955, from R. D. Cleaves, to Sales Department List A-2	1049	2595
411—Report entitled "Container Requirements for Coffee, Soluble" by H. P. Lankelma, Jr., Special Products Section, prepared June 15, 1955, revised May 1, 1956	1054	2602
412—Excerpt from report entitled "Instant Coffee Container Study", dated February 15, 1955, conducted for Continental Can Company by National Family Opinion, Inc.	1059	2609
413—Excerpt of report entitled "Folger Soluble Coffee Can Investigation in Kansas City, November 1955", issued by Commercial Research Dept., December 1955	1063	2612
415B—Report entitled "Promotion of Baby Food in Cans—Structural Changes in Cans and Advertising Programs", dated July 13, 1953	1065	2614
415C—Memorandum dated February 10, 1947, from G. H. Muth to Messrs. Pearson, Fogarty and Brachle	1072	2623
416—Excerpt of report entitled "Report of Consumer Survey made in Philadelphia on Baby Food for Continental Can Company, Inc."	1077	2628

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
417—Report entitled "Reclosure Baby Food Can— Relationship between Market Acceptability Information and Contemplated Can De- velopments", dated July 15, 1958	1084	2632
419A, 419B, 419C—Memorandum dated July 5, 1945, from S. T. Frame, Manager of Mar- ket Analysis, to Messrs. Fogarty, Perin and Falk re Baby Food Survey	1089	2636
420—Excerpt of report entitled "Use, Attitudes and Opinions of Cans vs. Glass Jars for Prepared Baby Food Among Young Mothers and Doctors" by S-D Surveys, Inc., February, 1954	1100	2649
421A—Memorandum dated August 13, 1953, from S. B. Smart to W. K. Neuman	1101	2650
423-427—Reports on packaging guides for pressure dispensed foods: barbecue sauce, chocolate syrup, salad dressings, dressings for salad, whipped toppings	1132	2654
429—Report entitled "Liquid Detergents, Analysis of the Potential Market for Metal Cans" with transmittal letter dated January 19, 1954, from D. H. Walker to L. C. Mackel- den	1145	2671
434—Report entitled "Comparative Costs, Single Trip versus Returnable Beer Containers, Year 1943, reprinted from 'American Brewer'", dated June 4, 1947	1171	2693
435—Memorandum dated June 10, 1947, from G. H. Muth to T. C. Fogarty	1177	2700
436—Report entitled "Comparative Delivered Costs, 12 oz. Non-Returnable Beer Bottle vs. 12-oz. Flat Top and Cap Sealed Beer Cans", dated August 7, 1947	1181	2704
438—Letter dated June 30, 1949, from Commercial Research Department to All District Sales Managers re One-Way Single Trip Beer Bottle Prices (attachments omitted in printing)	1183	2705
439—Letter dated July 11, 1949, from M. M. Dukehart, Jr., to All District Sales Man- agers, with data sheets attached	1184	2706
440—Memorandum dated October 31, 1952, from D. H. Walker to M. M. Dukehart, with report attached entitled "Current and Prospective Markets for Beer Packages Smaller than 12 Ounces"	1188	2709

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
440A—Memorandum dated January 29, 1952, from D. H. Walker to M. M. Dukehart, Jr.	1197	2723
441—Memorandum dated December 31, 1952, from D. H. Walker to M. M. Dukehart	1200	2727
442—Excerpt from report entitled "A Comprehensive National Study of Consumer Preferences for Different Types of Beer Containers", dated January 1954	1206	2734
445—Report entitled "Retail Level Study of New Quart Beer Can Acceptance in Chicago" with transmittal memorandum dated February 21, 1956, from Dana Hill to C. H. Buckley	1210	2738
446—Report entitled "Carbonyl Compounds in Schlitz Beer (Test Pack C659)", dated December 5, 1957	1217	2743
448—Report on packaged beer trends entitled "June Packaged Sales Soar", dated August 25, 1958	1222	2748
543—Report entitled "Beer Can Shipments", dated March 25, 1952, with table attached	1224	2751
588—Report entitled "Beer Trends", dated July 9, 1948	1226	2754
589—Memorandum dated June 9, 1948, from L. E. Dake re beer sales and production, with tables attached	1229	2758
600—Pamphlet entitled "ABC's—Canning" of Continental Can Company	1232	2761
600B—Memorandum dated May 26, 1953, from D. H. Walker to M. M. Dukehart, Jr.	1251	2781
601—Memorandum dated August 7, 1953, from D. H. Walker to C. H. Buckley	1254	2785
612—Excerpt of report entitled "Attitude of Grocery Chains toward Canned Soft Drinks" by Continental Can Company, dated December 13, 1954	1257	2789
613—Report entitled "A New Look at Soft Drinks in Cans", by C. H. Buckley, dated March 4, 1955	1258	2790
617—Memorandum dated March 1956, from C. H. Buckley to L. A. Carey, with tables attached	1264	2797
641—Excerpt from "Canned Foods, Merchandiser Digest", issue of May 1957	1269	2803
642—"Canned Foods, Merchandiser Digest", issue of August 1957	1270	2804

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
649—Excerpt of newsletter entitled "Foods-in-glass News" Vol. II, No. 4, dated June 1957	1274	2808
656—Excerpt of "Canned Foods Newsletter for Brokers" dated May 1958	1277	2812
669, 671—Advertisements of Hazel-Atlas Glass appearing in various trade journals	1279	2814
675—Proof of advertisement of Continental Can Company to appear in 1955-56 Directory of Breweries	1281	2817
684—Release #1113, dated August 31, 1955 to Sales List A-2, entitled "Publicity that makes Continental stand out", enclosing various newspaper clippings (excerpt)	1282	2818

Volume IV

773—Letter dated June 2, 1953, from E. P. Williams to J. C. Neuhart	1284	2821
775—Letter dated April 5, 1954, from F. C. Menair to J. S. Algeo	1286	2822
776—Letter dated May 5, 1954, from Robert B. Reinhart to J. S. Algeo	1288	2824
781—Memorandum dated January 29, 1954, from J. S. Algeo to all agents transmitting remarks made at Cannery Convention—January 25, 1954	1289	2825
785—Statement entitled "Question 10—Acquisitions by Continental Can Company, Inc., 1942-1956"	1292	2829
786—Letter dated February 20, 1946, from H. Bartow Farr to William H. England and letter dated April 22, 1946, from Sherlock McKewen to William H. England (attachments to letter omitted in printing)	1298	2835
788—Certified copy of a portion of minutes of a meeting of the Board of Directors of Continental Can Company, Inc., held May 16, 1956	1334	2864
800—Plaintiff's Charts (excerpts)	1334a	2865
I Glass Container Shipments in the United States	1335	2866
II Metal Container Shipments in the United States	1354	2885

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Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
III U. S. Metal Container Shipments and Continental Can Participation by Regions and U. S. Glass Container Shipments and Hazel-Atlas Participation by Regions	1370	2902
IV Historical Growth of Metal and Glass Container Shipments Expressed as Index Numbers and Shown as a Trend	1399	2931
V Metal and Glass Container Shipments	1405	2937
VII Tin Can and Other Tinware Industry	1416	2948
IX Shipments of Commercial Closures, Vacuum and Non-Vacuum Types, Screw Thread, Lug and Crown Caps in the U. S.	1419	2951
801—Plaintiff's Statistical Tables—Folder A	1422	2955
Nos. 1a-1f—Continental United States Shipments for 1955, 1956 and 1957 of all types of glass containers	1423	2956
Nos. 2a-2f—Continental United States Shipments for 1955, 1956 and 1957 of all types of metal containers	1430	2962
Nos. 3a-3f—Continental United States Shipments for 1955, 1956 and 1957 of glass and metal containers	1436	2967
802—Plaintiff's Statistical Tables—Folder B	1443	2973
Nos. 1a-1f—Continental U. S. Shipments, East of the Rockies in 1955 for glass and metal containers, all types	1449	2979
Nos. 2a-2f—Continental U. S. Shipments, West of the Rockies in 1955 for glass and metal containers, all types	1456	2986
Nos. 3a-3e—Continental U. S. Shipments, East of the Rockies in 1955 for all types of metal containers	1463	2993
Nos. 4a-4e—Continental U. S. Shipments, West of the Rockies in 1955 for all types of metal containers	1469	2999
Nos. 5a-5f—Continental U. S. Shipments, East of the Rockies in 1955 for all types of glass containers	1475	3005
Nos. 6a-6f—Continental U. S. Shipments, West of the Rockies in 1955 for all types of glass containers	1482	3012
Nos. 7a-7f—Continental U. S. Shipments for 1955 of all types glass and metal containers	1489	3019

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
803—Plaintiff's Statistical Tables—Folder C (ex- cerpt ⁵)	1496	3027
No. 1c—Continental United States Ship- ments of metal containers for sale by the three leading manufacturers (excludes metal containers shipments by captive plants)	1497	3028
No. 2c—Production and shipments of crown caps by Continental Can Company com- pared to United States total for the years 1955, 1956 and 1957	1498	3029
No. 3c—1956 and 1957 production and ship- ments of vacuum, screw thread, and lug commercial closures made from tin mill products by White Cap Company and Hazel-Atlas Glass Co. in 1956	1499	3030
No. 4c—Production and shipments of vacuum type commercial closures (tin mill prod- uct) in 1958 by White Cap Company and screw thread and lug type (non-vacuum) commercial closures by Hazel-Atlas Glass Co.	1500	3031
805—Letter dated June 9, 1960, from Helmer R. Johnson to Robert A. Bicks	1501	3032
806—Article entitled "Aerosol Containers—1947, Present and Future", by John M. Heinen, Jr., Joint Session, Aerosol Division and Insecticide Division, Mid-year meeting, May 21 and 22, 1957	1506	3036
900—Letter dated July 18, 1956, from Willkie Owen Farr Gallagher & Walton to Victor R. Hansen	1508	3043
949—FBI's lists of household products packaged in cans or glass containers purchased in Washington area stores on 8/23/60, 8/30/60, 9/1/60, 9/7/60	1543	3069
1158—Schedule of products observed at Decatur, Georgia, store	1559	3081
1160-1177—Lists of products packaged in glass, can, and plastic containers observed in Georgia stores on 9/1/60, 9/8/60, 9/6/60, 8/30/60, 9/2/60, 9/7/60	1568	3091
1178A-1178B—FBI's lists of items packaged in cans, glass, and plastic containers identi- fied in the Los Angeles area stores	1607	3109

Record from the United States District Court for the
Southern District of New York—Continued

GOVERNMENT'S EXHIBITS—Continued

	Original	Print
1179-1201—FBI's lists of food products, household products, and toilet articles packaged in can, glass, and plastic containers handled by Chicago area stores during August-September, 1960	1651	3150
1202—Annual Report of Steel and Tin Consumed in Metal Cans for the years 1948-1957, inclusive	1690	3181
1205—Explanation for filling out GCMR Reporting Form 1-54, dated 12/16/57, with schedules attached	1713	3205
1209—Excerpts from booklet of Continental Can Company, Inc., entitled "Notice and Proxy Statement for Special Meeting of Common and Preferred Stockholders to be held October 26, 1956"	1718	3212
1210—Pamphlet of Hazel Atlas Glass Company containing "Notice of Special Meeting of Stockholders" and Proxy Statement, July 6, 1956	1724	3219
1211—Continental Can Company, Inc.—Annual Report 1955	1766	3263
1212—Continental Can Company, Inc.—Annual Report 1956	1793	3290
1213—Continental Can Company, Inc.—Annual Report 1957	1832	3329

Record from the United States District Court for the
Southern District of New York—Continued

DEFENDANTS' EXHIBITS:

	Original	Print
J—Petition of Disinterested Trustee, etc., in the matter of Neville Island Glass Company, Inc., No. 21680, in USDC, WD Pa., with Report and Statement of Trustee attached	1864	3361
K—Letter dated October 21, 1958; from Emhart Manufacturing Company to U. S. Dept. of Justice re inquiry concerning glassware forming machines and related subjects, with attachments (copy—omitted in printing)	1903	3389
N—List of household products and food products, designated S-14, entitled "Estimates"	1904	3389
O—List of household products and food products	1908	3392
P—Article entitled "The Billion Dollar Glass Container Business" source: GCMI, M R & P DIV., #354—8/11/58	1911	3396
V—Sample form M34D (1-15-57, for reporting metal can shipments to Bureau of the Census	1912	3399
X—Interrogatory 6 and Answer to Interrogatory 6(b)	1914	3401

[fol. a]

[File endorsement omitted]

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**IN UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK**

Civil Action No. 112-387

UNITED STATES OF AMERICA, Plaintiff,

v.

CONTINENTAL CAN COMPANY, INC. AND HAZEL-ATLAS
GLASS COMPANY, Defendants.

COMPLAINT—Filed September 10, 1956

The United States of America by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of said Act, 38 Stat. 731, as amended by the Act of Congress of December 29, 1950, c. 1184, 64 Stat. 1125.

2. Defendant Continental Can Company, Inc., maintains offices, transacts business and is found within the Southern District of New York.

3. Defendant Hazel-Atlas Glass Company transacts business within the Southern District of New York.

[fol. b]

II

~~The Defendants~~

4. Continental Can Company, Inc., hereinafter referred to as "Continental," is named a defendant herein. Continental is a corporation organized and existing under the laws of the State of New York, with its principal office located in New York, New York.

5. Hazel-Atlas Glass Company, hereinafter referred to as "Hazel-Atlas," is named a defendant herein. Hazel-Atlas is a corporation organized and existing under the laws of the State of West Virginia, with its principal office located in Wheeling, West Virginia.

III

Trade and Commerce

6. Defendant Continental is engaged in the manufacture and sale of a variety of containers and related items including cans and other metal containers; plastic, fibre and paper containers; and other packaging materials. Continental's total net sales for the year 1955 were \$666,266,408 and its total assets on December 31, 1955 were \$381,917,101. Since 1942 Continental has acquired more than 25 independent business enterprises engaged in the production and sale of products in the container field.

7. Defendant Hazel-Atlas is engaged in the manufacture and sale of a variety of glass containers and related items including wide mouth and narrow neck bottles, metal closures, tableware, tumblers and industrial glassware. Total net sales of Hazel-Atlas for the year 1955 were \$79,919,795 and total assets on December 31, 1955 were \$37,884,424.

8. Defendant Continental is engaged in the manufacture and sale of metal cans which are sold for use in the canning and packaging of foods, beer, beverages, drugs, cosmetics, chemicals, paints and oils, detergents, and other products. Continental operates can manufacturing plants in several states including Alabama, California, Colorado, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey,

New York, Ohio, Oregon, Pennsylvania, Texas, Washington and Wisconsin. It sells and ships the cans from plants in these states to customers located in other states throughout the United States. Continental is the second largest manufacturer of metal cans in the United States and manufactures and sells in excess of 30 per cent of the metal cans sold in this country. Continental's gross sales of such cans amounted to \$401,000,000 in 1954 and to \$433,100,000 in 1955.

9. Defendant Continental manufactures and sells plastic bottles which are used mainly for the packaging and dispensing of toiletries, cosmetics, nasal sprays, food and other products. Continental is the fourth largest domestic company in the sale of plastic "squeeze" bottles alone, having sales of \$700,000 in 1954 and \$1,300,000 in 1955 representing about 9% of total industry sales in this field.

10. Defendant Hazel-Atlas is engaged in the manufacture and sale of glass bottles which are sold for use in the canning and packaging of foods, beer, beverages, drugs, cosmetics, chemicals, oils and preservatives, detergents and other products. Hazel-Atlas operates bottle manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia. It sells and ships these bottles from plants in these states to customers located in other states throughout the United States. Hazel-Atlas is the largest manufacturer of wide mouth glass bottles and the second largest manufacturer of all glass bottles in the United States.

11. Foods, beer, beverages, drugs, cosmetics, chemicals, paints, oils and preservatives, detergents and a variety of other products are packaged in metal cans, plastic bottles and glass bottles. Manufacturers and processors of these products in many cases have a choice of the type of container they will use. In fact, many manufacturers and processors of the above products package the same product in both plastic and glass bottles or in both metal cans and glass bottles, thus permitting the purchaser and consumer [fol. d] to select the container of his choice. Metal cans and plastic bottles manufactured by Continental are sold by that company in competition with glass bottles manufactured and sold by Hazel-Atlas.

12. Defendant Continental is engaged in the manufacture and sale of crown caps for use on beverage bottles by

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brewers and soft drink bottlers. It is the second largest domestic producer in this field. Continental ships these closures from crown cap plants in the states of California, Delaware, and Louisiana, and also from can manufacturing plants in Pennsylvania and Wisconsin to customers located in other states throughout the United States. In addition, on January 4, 1956, Continental acquired White Cap Company the leading manufacturer of vacuum type metal closures used for sealing a variety of food and other products in glass bottles. Defendant Continental's gross sales of metal closures in 1955 combined with those of White Cap Company amounted to approximately \$36,700,000. Continental is the second largest domestic manufacturer of these types of metal closures and sells about 18 per cent of such types of closures sold in the United States. Defendant Hazel-Atlas is engaged in the manufacture and sale of screw type metal closures used for sealing a variety of food and other products in glass bottles. Manufacturers and processors of certain food and other products in many cases have a choice of the type of closure they will use. Some manufacturers use closure of the types produced by both Continental and Hazel-Atlas in merchandising the same product. Closures manufactured by Continental are sold by that company in competition with the closures manufactured and sold by Hazel-Atlas.

13. Defendant Continental is engaged in the manufacture and sale of various types of fibre drums having capacities ranging from less than a gallon to seventy-five gallons each. These drums are used for the shipment of dry, solid and liquid products such as certain chemicals, plastics, foods, (oil, etc) film and metal parts. In the year 1955 Continental manufactured and sold more than 82% of all fibre drums produced and sold in the United States.

IV

Offense Charged

14. On June 29, 1956, Continental entered into an agreement with Hazel-Atlas under which Continental will acquire all the assets, properties, business and good will of Hazel-Atlas in exchange for an aggregate of 999,140 shares of

common stock of Continental and the assumption by Continental of all of the liabilities of Hazel-Atlas. This acquisition was approved by the holders of 60% of the outstanding stock of Hazel-Atlas at a special meeting of its stockholders on August 7, 1956, and unless postponed by public authority or by further agreement of the parties is scheduled to become effective on/or about September 11, 1956. The effect of this acquisition, if consummated, with respect to trade and commerce in metal cans, glass bottles, plastic bottles, metal closures, fibre drums, or any of them, or in the container field, may be substantially to lessen competition, or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, among other ways, as follows:

a. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of metal cans and glass bottles will be eliminated;

b. Actual and potential competition in the production and sale of metal cans and glass bottles, generally, may be substantially lessened;

c. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of plastic and glass bottles will be eliminated;

d. Actual and potential competition in the production and sale of plastic and glass bottles, generally, may be substantially lessened;

[fol. f] e. Actual and potential competition between Continental and Hazel-Atlas in the production and sale of metal closures will be eliminated;

f. Actual and potential competition in the production and sale of metal closures, generally, may be substantially lessened;

g. The combination of the second largest domestic metal can manufacturer with the second largest domestic glass bottle manufacturer may give the resulting combination a decisive advantage over its less diversified competitors and may result in a substantial lessening of competition or a tendency to monopoly, or both, in the container field;

h. Industry-wide concentration in the manufacture and sale of products in the container field will be increased.

Prayer

Wherefore, plaintiff prays:

1. That a temporary restraining order and/or a preliminary injunction issue enjoining the defendants, their officers, directors, agents, employees and all other persons acting on their behalf from taking any further action to consummate the acquisition, and from making any changes directly or indirectly in the corporate structure of Hazel-Atlas or in the operations and policies of Hazel-Atlas with regard to the manufacture and sale of any of its products pending final adjudication of the merits of this complaint.

2. That the threatened acquisition of Hazel-Atlas described herein be adjudged a violation of Section 7 of the Clayton Act.

3. That the defendant Continental, its officers, directors, agents and all other persons acting on its behalf be enjoined from acquiring the stock or assets of Hazel-Atlas, and for such a period as the court may direct, from acquiring the [fol. g] stock or assets of any other corporation engaged in the manufacture or sale of products in the container field.

4. That, pursuant to Section 15 of the Clayton Act, an order be made and entered herein requiring defendant Hazel-Atlas to be brought before the Court in this proceeding and directing the Marshal of the Northern District of West Virginia to serve summons on it.

5. That plaintiff have such other and further relief as the Court may deem just and proper.

6. That plaintiff recover the costs of this suit.

/s/ William H. McManus. /s/ John M. O'Donnell.
/s/ Edward G. Gruis. /s/ Donald F. Melchior.
Attorneys, Department of Justice.

/s/ J. Lee Rankin, Acting Attorney General. /s/ Victor R. Hansen, Assistant Attorney General. /s/ Richard B. O'Donnell, Attorney, Department of Justice. /s/ John T. Duffner, Attorney, Department of Justice. /s/ Ephraim Jacobs, Attorney, Department of Justice.

[fol. h] *Duly sworn to by William H. McManus. Jurat omitted in printing.*

[fol. i]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

ANSWER OF HAZEL-ATLAS GLASS COMPANY—Filed October 1,
1956

Defendant, Hazel-Atlas Glass Company, a dissolved corporation, answers the correspondingly numbered paragraphs of the Complaint as follows:

I

Jurisdiction and Venue

1. Admits the averments contained in paragraph 1, but denies that it has violated, or is about to violate, Section 7 of the Clayton Act, referred to in the Complaint, or any other provision of the antitrust laws.

2. Admits, upon information and belief, the averments contained in paragraph 2.

3. Admits, with respect to Paragraph 3, that at the time of the commencement of this action (but not since September 13, 1956) it transacted business within this district and alleges that on September 21, 1956 it was dissolved.

II

The Defendants

4. Admits the averments contained in the first sentence of paragraph 4. Admits, upon information and belief, the [fol. j] averments contained in the second sentence of paragraph 4.

5. Admits, with respect to Paragraph 5, that at the time of the commencement of this action it was a corporation organized and existing under the laws of the State of West Virginia, with its principal office located in Wheeling, West Virginia, but alleges that on September 21, 1956, it was dissolved.

III

Trade and Commerce

6. Admits, upon information and belief, the averments contained in the first sentence of paragraph 6. Admits, upon information and belief, that Continental is engaged in the manufacture and sale of cans, plastic, fibre and paper containers. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments of this paragraph.

7. Admits, with respect to Paragraph 7, that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of a variety of glass containers and related items including wide mouth and narrow mouth bottles, metal closures, tableware, tumblers and industrial glassware, but avers that the designation "wide mouth" refers to jars rather than bottles and that the terms "tableware, tumblers and industrial glassware" are "related" to glass containers only in the sense that they are made of glass. Admits that its total net sales for the year 1955 were \$79,919,795.00 and that its total assets on December 31, 1955 were \$37,884,424.00.

[fol. k] 8. Admits, upon information and belief, the averments of paragraph 8 that defendant Continental is engaged in the manufacture and sale of metal cans which are sold for use in the canning and packaging of one or more of the products specified in the first sentence of paragraph 8. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in paragraph 8.

9. Admits, upon information and belief, that Continental manufactures and sells plastic bottles. Is without knowledge or information sufficient to form a belief as to the truth of any of the remaining averments of paragraph 9.

10. Admits that at the time of the commencement of this action (but not since September 13, 1956) it was engaged in the manufacture and sale of glass bottles and jars which were sold for use in the canning and packaging of certain foods, beer, certain beverages, certain drugs, certain cosmetics, certain chemicals, certain oils and preservatives,

certain detergents and certain other products; that it operated glass bottle and jar manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia, and that it sold and shipped the bottles and jars so manufactured to customers located in other States. Denies all other allegations of paragraph 10, and specifically denies the allegations that it is the largest manufacturer of wide mouth glass bottles, and second largest glass manufacturer of all glass bottles in the United States.

11. Denies the averments contained in paragraph 11.

12. Is without knowledge or information sufficient to form [fol. 1] a belief as to the truth of the allegations of the first and second sentences in paragraph 12. Admits, upon information and belief, that Continental acquired the Capital Stock of White Cap Company, a manufacturer of vacuum type metal closures. Is without knowledge or information sufficient to form a belief as to the truth of any of the other averments of the third sentence of paragraph 12. Is without knowledge or information sufficient to form a belief as to the truth of any of the averments contained in the fourth, fifth and sixth sentences of paragraph 12. Admits with respect to the averments of the seventh sentence of said paragraph that Hazel-Atlas, at the time of the commencement of this action (but not since September 13, 1956) was engaged in the manufacture and sale of screw type metal closures used for sealing a variety of food and other products in glass bottles. On information and belief, denies the allegations contained in the remainder of paragraph 12.

13. Is without knowledge or information sufficient to form a belief as to the truth of any of the averments contained in paragraph 13.

IV

Offense Charged

14. Admits the averments contained in the first sentence of paragraph 14. Admits that the alleged acquisition was approved by the holders of approximately 90% of the outstanding stock of Hazel-Atlas at a special meeting of the stockholders on August 7, 1956; and that the acquisition was, for a time, scheduled to become effective on or about September 11, 1956; and alleges that on September 13, 1956

Continental and Hazel-Atlas consummated the acquisition [fol. m] pursuant to said agreement—Continental delivering 999,140 shares of its common stock to Hazel-Atlas and assuming the liabilities of Hazel-Atlas in exchange for the latter's assets and that since September 13, 1956 Continental has been, and now is, the owner of all of said assets and has them in its possession. Denies each remaining averment in this paragraph.

For a First-Complete and Affirmative Defense the Defendant Hazel-Atlas Glass Company, in Dissolution, Alleges

15. That on September 21, 1956 this defendant was dissolved and its business and affairs wound up and terminated and that by reason thereof the alleged cause of action against it has become moot.

Wherefore, Hazel-Atlas prays that the Complaint be dismissed.

William J. Barnes, 20 Exchange Place, New York 5,
N. Y., Attorney for Hazel-Atlas Glass Company.

Charles F. Paul, Of Counsel.

[fol. n] *Duly sworn to by H. G. Lewis. Jurat omitted in printing.*

[fol. o] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

ANSWER OF DEFENDANT CONTINENTAL CAN. COMPANY, INC.—
Filed October 1, 1956

The defendant Continental Can Company, Inc., answering the complaint:

1. Admits the allegations of Paragraph 1, but denies that it has violated, or is about to violate, Section 7 of the Clayton Act.
2. Admits, with respect to Paragraph 3, that at the time

of the commencement of this action (but not since September 13, 1956) the defendant Hazel-Atlas Glass Company transacted business within this district and alleges that on September 21, 1956 said defendant was dissolved.

3. Admits, with respect to Paragraph 5, that at the time of the commencement of this action Hazel-Atlas was a corporation organized and existing under the laws of the State of Virginia with its principal office located in Wheeling, West Virginia, but alleges that on September 21, 1956 Hazel-Atlas was dissolved.

4. Admits the allegations of the first two sentences of Paragraph 6 and that since 1942 it has acquired the stock [fol. p] or assets of certain other corporations, but except as so admitted denies the allegations of said Paragraph 6.

5. Admits, with respect to Paragraph 7, that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of glass containers and related items, including wide mouth and narrow neck bottles, metal closures, tableware, tumblers and industrial glassware and alleges, upon information and belief, that the term "wide mouth jars" more properly describes the containers referred to as "wide mouth bottles" in said paragraph and that the terms "tableware, tumblers and industrial glassware" are "related" to glass containers only in the sense that they are made of glass and further admits, upon information and belief, that the total net sales of Hazel-Atlas for the year 1955 were \$79,919,795; and the total assets on December 31, 1955 were \$37,884,424.

6. Admits the allegations of the first, second and third sentences of Paragraph 8, except that it denies that it operates can manufacturing plants in Alabama and Kansas and, upon information and belief, admits the allegations of the fourth sentence of said paragraph, and admits the allegations of the fifth sentence thereof.

7. Admits that it manufactures and sells plastic bottles which are used for the packaging and dispensing of toiletries, cosmetics, nasal sprays and food, but otherwise denies the allegations of the first sentence of Paragraph 9 and, upon information and belief, admits the allegations of the [fol. q] second sentence of said paragraph and alleges that \$580,000, of the gross sales in 1954 and \$776,000, of the gross

sales in 1955 were from the sale of non-commercial packages and that when these sales figures are deducted from the total commercial plastic bottle sales for the respective years, Continental's percentage share of the market was approximately 5% of the total industry's sales in this field.

8. Admits that at the time of the commencement of this action (but not since September 13, 1956) Hazel-Atlas was engaged in the manufacture and sale of glass bottles and jars which were sold for use in the canning and packaging of certain foods, beer, certain beverages, certain drugs, certain cosmetics, certain chemicals, certain oils and preservatives, certain detergents and other products; that Hazel-Atlas operated glass bottle and jar manufacturing plants in Alabama, California, New York, Ohio, Oklahoma, Pennsylvania and West Virginia and that it sold and shipped the bottles and jars so manufactured to customers in other states; but except as so admitted denies, upon information and belief, the allegations of Paragraph 10 of the complaint.

9. Upon information and belief, denies the allegations of Paragraph 11.

10. Admits the allegations of the first sentence of Paragraph 12 and, upon information and belief, admits the allegations of the second sentence of said paragraph. Admits that it ships closures from plants in the states of California, Delaware and Louisiana and also from plants in Pennsylvania and Wisconsin to customers located in other states of the United States, but otherwise denies the allegations of the third sentence of said paragraph. Admits that in January, 1956, it acquired the capital stock of White Cap Company, a manufacturer of vacuum type metal closures used for sealing a variety of food products in glass bottles, but otherwise denies knowledge or information sufficient to form a belief as to the allegations of the fourth sentence of said paragraph. Admits the allegations of the fifth sentence of said paragraph and, upon information and belief, admits the allegations of the sixth sentence thereof. Upon information and belief, admits, with respect to the averments of the seventh sentence thereof, that Hazel-Atlas, at the time of the commencement of this action (but not since September 13, 1956) was engaged in the manufacture and sale of screw type metal closures used for sealing a variety of foods and other products in glass bottles. Upon

information and belief, denies the allegations of the eighth, ninth and tenth sentences of said paragraph.

11. Admits the allegations of the first and second sentences of Paragraph 13 and, upon information and belief, admits the allegations of the third sentence thereof.

12. Admits the allegations of the first and second sentences of Paragraph 14, except that it alleges that the acquisition was approved by the holders of approximately 90% of the outstanding stock of Hazel-Atlas and that on September 13, 1956 Continental and Hazel-Atlas consummated the acquisition pursuant to said agreement—Continental delivering 999,140 shares of its common stock to Hazel-Atlas and assuming the liabilities of Hazel-Atlas in exchange for the latter's assets, and that since September 13, 1956 Continental has been, and now is, the owner of all of said assets and has them in its possession. Denies the allegations of the third sentence of said paragraph.

Wherefore, the defendant Continental Can Company, Inc. prays for judgment dismissing this action and for its costs and disbursements.

Willkie, Owen, Farr, Gallagher & Walton, By Helmer R. Johnson, A Member of the Firm, Attorneys for Defendant, Continental Can Company, Inc., Office and P. O. Address, 15 Broad Street, New York 5, N. Y.

[fol. t] *Duly sworn to by L. Wilkinson. Jurat omitted in printing.*

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK

Civ. 112-387

UNITED STATES OF AMERICA, Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC., AND
HAZEL-ATLAS GLASS COMPANY, Defendants.

Transcript of Proceedings—June 13-17, inc., 20-24, inc.,
27-30, inc., July 1, 1960.

Before: Hon. Frederick vP. Bryan, District Judge.

New York, June 13, 1960; 10:30 o'clock a.m.

APPEARANCES:

Richard B. O'Donnell, Esq., Attorney, Department of Justice, for the Plaintiff; By William H. McManus, Esq., Samuel V. Greenberg, Esq., John W. Pettit, Esq., Attorneys, Department of Justice.

Willkie, Farr, Gallagher, Walton & Fitz Gibbon, Esqs., Attorneys for Defendant Continental Can Company, Inc.; Mark F. Hughes, Esq., Helmer R. Johnson, Esq., Bowie K. Kuhn, Esq., Milton Handler, Esq., and Stanley Robinson, Esq., of Counsel.

[fol. 2] The Clerk: Trial of the United States of America vs. Continental Can Company, Inc., and Hazel-Atlas Glass Company.

Both sides ready?

Mr. McManus: Ready.

Mr. Hughes: Defendants ready.

Mr. McManus: Government is ready, your Honor.

The Court: All right, gentlemen.

Now, it seems to me appropriate, if you are prepared to do so, that I would hear a brief opening from each of you.

Mr. McManus: Your Honor, as we had explained to you our position heretofore, I didn't come prepared to make an

opening statement. We had explained the documents and generally what was going to be testified to.

The Court: Yes, I understand that. I want just a brief opening statement of your overall position.

Mr. McManus: All right, sir.

OPENING STATEMENT BY MR. McMANUS,
COUNSEL FOR PLAINTIFF

The position of the Government is this, your Honor: There is no question but that Continental Can Company acquired the Hazel-Atlas Glass Company, and the Government intends to prove that Continental Can is the second [fol. 3] largest manufacturer of metal cans in the United States, and that Hazel-Atlas is a principal manufacturer of glass containers.

We also intend to prove, your Honor, that Continental Can manufactures plastic containers; they also manufacture crowns; they also manufacture—

The Court: by "crowns" you mean crown caps?

Mr. McManus: Yes, sir, what goes on top of a beer bottle—we will put it that way—or soft drink bottle.

The Court: Mr. McManus, we have got to remember, that while I am, on the basis of this pretrial record, quite familiar with these technical terms, it just could be that some day the Court of Appeals would have to look at this record, and I think in the earlier stages we try and define our terms that record becomes a good deal more comprehensible to an Appellate Court if it ever has to review it.

Mr. McManus: Your Honor, actually one of our earlier witnesses, we expect, will define these terms in regard to caps, crowns, vacuum closures, non-vacuum and things of that nature, because it gets confusing to me; I am sure it gets confusing to the Court and gets confusing to people who [fol. 4] are not familiar with the terms in the industry, and I assume that the Appellate Court will not be familiar with the terms.

It is our position that Continental is a principal supplier of crowns, of vacuum caps, and Hazel-Atlas was a supplier of non-vacuum type of caps.

I am not sure I said before, but Continental was also an important supplier of plastic containers.

Now, basically, it is the Government's position that the metals cans made by Continental are in competition with the glass containers of the Hazel-Atlas Glass Company for the purpose of sale to food processors, the beer industry, the soft drink industry, and certain non-food lines.

Now, in the non-food fields, which include household and chemical, toiletries and cosmetics, the Government's position is that the plastic containers of Continental Can are in competition with the glass containers of Hazel-Atlas, and also the glass containers for toiletries and cosmetics, for example, are or were in competition with certain of the cans made by Continental Can Company.

As I said, I believe, before, in the food field we believe that the glass and cans are competing for the same customers, [fol. 4a] and we intend to prove that by this acquisition Continental has eliminated a substantial factor in these markets.

[fol. 5] We also intend to prove through testimony and documents that there has been an undue reduction in the number of these companies which are competing for the business of the food processors or the beer processors or soft drink industry.

We also intend to prove that there has been in certain instances an advantage gained which makes it more difficult for the competitors of Continental Can to compete.

Now that enters into the acquisition that Continental has made of the White Cap Company. The White Cap Company, we intend to prove, is the principal supplier in this country of vacuum caps and also vacuum-cap machinery. That is the machinery for placing the caps on the glass containers.

We contend that, and intend to offer evidence that, having acquired this very substantial White Cap Company and having acquired the glass company, that the combination of these two gives Continental an advantage over their less diversified competitors who do not have these facilities.

We intend to offer testimony that certain of these people feel that Continental Can Company has an advantage [fol. 6] over them.

We also make the argument that through the series of acquisitions of Continental into the diverse fields that they now have a full line advantage. It is hard to divorce, in

our opinion, this one acquisition of Hazel-Atlas from all the acquisitions of Continental, and although we are not attempting here to try the Obear case, we do believe that that case is part of the plan of carrying out the full line.

For example, we intend to offer proof that Continental is in a position to offer to a food packer, to a food processor, they are in a position to offer the White Cap machine, the White Caps, vacuum caps, glass containers and the corrugated shipping containers.

And it is our position because of these series of acquisitions we maintain that other companies to be competitive with Continental Can will have to do the same, and certain of our witnesses will testify to that effect.

So it is our position that concentration will increase because of the series of acquisitions in the packaging industry generally, and that this full line advantage of Continental [fol. 7] makes it more difficult for the other single line or maybe two-line companies to compete.

As I have said before, your Honor, and I would like to say again, we are not attempting to try a Sherman Act case, for, in effect, what you would prove in a Sherman Act case has already taken place. If you were trying such a case you would have these two companies and that they had agreed to fix prices between them. I think there is no question in anybody's mind but that now these two companies are merged as one company that the fixing of prices have taken place. So we are not attempting to prove that type of a case. We are attempting to prove just what I have outlined here in a very general way and which, in pretrial, I believe, I outlined in considerably more detail.

Now I believe that is a very brief and sketchy outline of the Government's position.

The Court: I will hear from you, Mr. Hughes.

Mr. Hughes: If your Honor please, to the extent that your Honor may wish an opening statement, I am going to leave that responsibility to Mr. Johnson.

[fol. 8] The Court: Very good.

OPENING STATEMENT BY MR. JOHNSON,
COUNSEL FOR DEFENDANT

Mr. Johnson: Your Honor, Continental Can acquired Hazel-Atlas Glass Company on September 13, 1956. Prior to that time Continental Can was a substantial can company. It manufactured cans made of metal. It manufactured vacuum-type closures. It manufactured plastic containers. It manufactured crown caps. It did not manufacture glass containers. It did not manufacture screw-type closures.

Hazel-Atlas at that date was a manufacturer of glass containers and a very small amount of screw-type closures. It did not manufacture plastic of any kind.

It is our position in this litigation that each of these several end products with which this case is concerned are separate lines of commerce.

Within the meaning of Section 7 of the Clayton Act and the judicial interpretations of that section, we say that it is not a horizontal case, it is a conglomerate case.

We say that while in certain instances it is true that some of these various types of containers may be used for the same end products, and I am sure we will hear a great deal [fol. 9] from the Government about some things like beer and applesauce, but unquestionably some of these things can be packaged in the same end product, but that we say does not put them in the same line of commerce.

There are reasons why each of the various end products which are packaged in quantities in the United States tend to move in the type of container in which it moves. There are separate markets for the various containers.

With respect to things like beer, for example, there are separate markets for the end product. A brewer has no free choice as to the amount of glass containers or cans to the extent that he must use both.

Under Section 7 of the Clayton Act as amended in 1950 the test for violation of that section is whether the acquisition of a company either may substantially lessen competition or there is a reasonable probability that it will lessen competition, or that it will tend to create a monopoly.

We say that neither of those things, neither of those tests of violation, can be shown to have occurred. There is no

reasonable probability of lessening competition. There is [fol. 10] no tendency to create a monopoly in any sense.

This case is different from many of the antitrust cases, Section 7 cases, that have heretofore appeared before the Courts and the Federal Trade Commission in that this is an inter-industry acquisition. No competitor disappears from the scene. All that happened when Continental acquired Hazel-Atlas was a substitution of one management for another. The facilities of Hazel-Atlas are still used to manufacture glass containers as they were before. The facilities of Hazel-Atlas are still used to manufacture screw-type closures in the same relatively small amount that it manufactured before. The facilities of Continental are still used to manufacture cans and plastic containers and crowns and screw-type closures. There has been no change in the use of facilities or in the nature of the trade.

The Court: When was the Gair acquisition in relation to the Hazel-Atlas acquisition?

Mr. Johnson: It was in November of 1956 as against September.

At that date Continental, and I don't think it enters into this case, Continental prior to the acquisition was also a [fol. 11] manufacturer of fibre drums and flexible packaging and paper plates and paper cups, so that Continental has certain commitments in the paper box and in the flexible packaging business. As I say, I have not understood that those were in this case, but it may be.

One other point that we shall bring out is this, your Honor: Hazel-Atlas Glass Company was an old and had been a very fine company. It, however, had grown old and weak and was becoming more and more ineffective in the markets in which it operated.

[fol. 12] Hazel-Atlas had gone from a high of 16 or 17 per cent of the total glass container industry in the 30's and 40's down to about 8 per cent at the time of the acquisition, and was on its way down and going down since, in spite of Continental's best efforts to revive it.

Its management was old, its equipment was old, its plants were badly located. That, of course, is the reason why it was on the market. It is the reason why Continental found it possible to buy it.

It bought it with a view to reviving it, redeveloping com-

petition, and we think that while the job is difficult, it does not go very fast, but it is making progress towards revival of competition in the glass container industry.

In that connection, your Honor, we will show that there are, in the United States, separate well-defined industries concerned with the products with which we are here concerned.

There is a can manufacturing industry. There is a glass container manufacturing industry. There is a crown industry, plastic bottle or plastic industry, screw-type closure, and vacuum type closure.

The market structure is such that each of these are separate [fol. 13-28] rate industries, move in separate lines of commerce, and any attempt to squeeze them into either one common line of commerce or various fragmented lines of commerce does violence to the reality of the market structure as it exists today.

That, in brief, your Honor, is the case which we propose to present.

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[fol. 29] GEORGE S. BABCOCK, called as a witness on behalf of Plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Babcock, by whom are you employed?

A. Owens-Illinois Glass Company.

Q. And what is your present position with that company?

[fol. 30] A. I am the vice-president of the company and general manager of the closure and plastics division.

The Court: Now, gentlemen, can you hear Mr. Babcock?

Mr. Handler: Not very well.

The Court: Not very well.

Mr. Babcock, will you please try to project your voice out there?

The Witness: Yes, sir.

Q. For how long a period have you been employed by the Owens-Illinois Glass Company?

A. Since November 1934.

Q. And what positions have you held with that company starting in 1934?

A. I started as a student in the Alton plant at Alton, Illinois. I came to Toledo in March of 1935 and was in what is known as the—was known as the statistical and inventory control department.

In 1939 I became an assistant to the general manager of the glass container division.

In May of 1949 I became sales manager of the closure and plastics division, and in 1952 I became general manager of that company, of that division, I should say, and in the fall of 1952 I became an officer of the company.

[fol. 31] Q. What products come under your division, Mr. Babcock?

A. We manufacture metal and plastic closures, plastic parts, that is fittings for glass containers, pill boxes, powder boxes, a miscellaneous line of containers such as vials, and we manufacture blown plastic containers out of polyethylene.

Q. Now, for the blown plastic containers out of polyethylene where are your plants located?

A. Currently we have operations at our Glassboro, New Jersey plant, St. Charles, Illinois, Los Angeles, California, Kansas City, Missouri, and we have announced plans and are in the process of equipping plants at Cincinnati, Ohio, and South Chicago, Illinois.

Q. As of this date, the Cincinnati and South Chicago plants are not making polyethylene containers?

A. No, sir.

Q. Now, what type of polyethylene containers do you make? Do you make a specific type, high density, low density?

A. We only use at the moment high density polyethylene.

[fol. 32] Q. I would like a description of the high density polyethylene container. That is not a squeeze bottle container, is it?

A. Not as generally known.

The Court: Supposing, Mr. Babcock, you tell us so that

we all know what you are talking about here, when you talk about high density polyethylene containers, give us a general description of what they are and what the end product is.

The Witness: The polyethylene container, your Honor, varies in densities from .92 to .96, and as densities vary upwards, the rigidity becomes greater, and therefore the high density polyethylene bottle is generally known as a semi-rigid container, whereas the low density polyethylene bottles have been known as squeeze containers because they are soft and can be flexed.

Although they have been used in such containers as rigid containers, generally speaking, the high density material therefore lends itself to thinner-walled containers for a given amount of rigidity.

Q. What are some of the products that you are selling the high density containers for?

[fol. 33] A. Light duty liquid detergents, cleaners, shampoos, drugs, rubbing alcohol.

Q. Now you indicated that you also make the polyethylene containers on the West Coast of Los Angeles, is that right?

A. That is right.

Q. Does that plant supply all of those containers for the West Coast area?

A. Yes, sir.

Q. Do you ship any of your polyethylene containers from other plants into the West Coast?

A. Currently we are not.

Q. Have you in the past?

A. I cannot say with certainty but I believe so.

The Court: When you say the West Coast, what do you mean by that?

The Witness: West of the Rocky Mountains.

The Court: West of the Rocky Mountains?

The Witness: Yes, sir.

The Court: The Rocky Mountains, as I recall my map, is a pretty broad set of mountains. I would like that territory reasonably defined so that we know what we are talking about in terms of geography.

The Witness: We will say that the West Coast area then

[fol. 34] would include the States of California, Oregon, Washington, Arizona, Nevada, Utah, Idaho.

The Court: In other words, the next tier—

The Witness: Yes, sir, and possibly the western section of Montana, Wyoming, and possibly the western part of New Mexico.

The Court: All right.

Q. Now you indicated that under your group or division come the various types of metal caps made by your company; is that correct?

A. Yes, sir.

Q. What type of caps, metal caps, does Owens-Illinois make?

A. We make what was referred to in the opening argument as the screw cap, which probably more technically is designated as the CT or continuous thread type of closure. I am specifically referring to the type of closure on that ink bottle (indicating).

Q. You say that is a CT closure?

A. Yes.

Q. What is another type of closure?

A. We then manufacture what is known as a lug type of closure where the lug engages the glass finish rather than the thread. We also make—

[fol. 35] Q. Before you go on, could you tell me what is a normal product on which you put a lug-type of closure?

A. Well, Arrid Underarm Deodorant.

Q. That has a lug-type closure?

A. Yes.

Q. Now what other type of metal closures do you make?

A. We also manufacture those closures—the lug and CT which I described, are top seal closures lined with a paper lining. We also manufacture a type of closure known as a side seal closure which has a rubber gasket affixed to the metal and forms a seal on the side as against the top.

Q. Does your company make other types of metal closures?

A. No other types of closure.

Q. Is that an explanation of the general type of closures that your company makes?

A. Yes, sir.

Q. Are any of these closures what quite often are called steam-type vacuum closures?

A. Yes, sir. The side seal closure which I described is applied with steam to create the vacuum.

[fol. 36] The Court: The others are not vacuum closures?

The Witness: No, sir.

Q. Now, in what plant do you manufacture your metal closures?

The Court: Before we leave this—and, Mr. McManus, if I ask questions that are going to anticipate something that you are about to go into, tell me, but I do not want to leave this subject with some obscurities in my mind.

I take it that the two metal types, the screw type and the lug type, those are for glass, are they?

The Witness: Yes, sir.

The Court: And only for glass?

The Witness: And/or cans.

The Court: And/or cans?

The Witness: Yes.

The Court: Give me an example of the screw cap that would be used on a can.

The Witness: We supply what is termed as a one-inch cap meaning that the neck opening on the can is one inch in diameter for what is known generally as the F-style can and probably more familiar to you as the type of can in which wax is packaged. It is an oblong-type of litho-
[fol. 37] graphed can.

The Court: That would be liquid wax?

The Witness: Yes, sir.

The Court: An oblong can with a screw cap?

The Witness: Yes, sir.

Q. Which plants are you manufacturing the metal closures in?

A. We manufacture metal closures at Glassboro, New Jersey, and San Jose, California.

Q. Do you manufacture all types at your San Jose plant, your full line of metal closures?

A. What do you mean by full line?

Q. Would you describe the general types of closures that

you make at San Jose. For example, do you make all the types of closures that you have described?

A. To my knowledge they do not manufacture the lug type and they do not make as many sizes in the CT or side seal type as we do at Glassboro.

Q. That is Glassboro, New Jersey?

A. Yes, sir.

Mr. Hughes: Your Honor, I am a bit confused on this—

The Court: All right, maybe we are both confused along [fol. 38] the same line.

I understood you to say that there were three types of closures, the screw cap, the lug type and the side seal?

The Witness: Yes, sir.

The Court: Is the side seal closure all vacuum or is there a separate category which uses the vacuum system?

The Witness: All of the side seal closures that Owens-Illinois is applying are used for vacuum types of closures.

The Court: They are all vacuum?

The Witness: Yes, sir.

The Court: So that there would be only three types of closures that we are dealing with with individual variations within those types?

The Witness: As far as Owens-Illinois is concerned.

The Court: Yes, that is what I meant.

The Witness: Yes, sir.

The Court: All right. Is that clear, Mr. Hughes?

Mr. Hughes: No, sir, I am a little unclear as to whether the witness was talking about San Jose or Glassboro, when the witness was asked about where these lug-type closures [fol. 39] were made.

The Court: I understood that he was talking about San Jose. Is that correct?

The Witness: We make the lug type at Glassboro. We do not make it in San Jose.

Q. And do you have customers on the West Coast who use your lug-type caps?

A. Not the lug types that we are currently making, no, sir.

Q. Does your New Jersey plant ship metal closures to the West Coast?

A. Yes, sir.

Q. And the West Coast would be the area that you have heretofore defined, the States that you have outlined?

A. Yes, sir.

Q. Now I believe you explained that the side seal is a vacuum-type of closure, is that correct?

A. Yes, sir.

Q. Do you manufacture and sell equipment for putting the side seal closures on the glass container?

A. We manufacture and lease.

Q. And lease?

A. Yes, sir.

[fol. 40] The Court: Can you give me an example of something that would be enclosed in a side seal vacuum-type container.

The Witness: Baby food.

The Court: Baby food in a side seal?

The Witness: Yes, sir. Your Honor, it would possibly help you to refer to that type of cap as a press-on type of cap. It takes an instrument to remove it.

The Court: I had been under the misapprehension apparently that when you talked about side seal closures you meant that they went on the side of the container.

The Witness: No, they fit over the top, but they engage both mechanically and by vacuum, and it takes a key or a knife, the back of a knife, to open it.

The Court: Why do you call them side seals?

The Witness: Because they seal on the side of the glass finish as against sealing on the top of a glass finish, which is true of the paper lined or even other types of closures.

The Court: All right.

Q. Could you explain the procedure, in a general way, of putting a side seal closure on a glass container? Just [fol. 41] how does that operate?

A. The jar is first filled, and the filler, the filling machine that fills the jar, is usually hooked up with the capping machine so that they work together; and after the jar is filled it is passed into the capping machine. It is a worm drive or some such type of machine generally. The closure is then brought down on top of the jar. It does not engage, but just before it engages to the glass jar, steam is inserted

into the head space, which is the remaining area between the food and the top of the jar, exhausting the oxygen or air with steam, and then the closure is engaged creating the vacuum.

Q. When the steam cools or the product cools it causes the vacuum?

A. Yes, sir.

Q. To your knowledge—

The Court: Now let me ask you this: Am I correct, Mr. Babcock, in saying that when the vacuum is created the cap is pressed on? It is the vacuum that causes the cap to stick on or is there friction also which causes the cap to stick on?

The Witness: In some types I would say—and I am not [fol. 42] a technician—the strictly vacuum-type of closure, you hold it on both by vacuum and a mechanical engaging ring.

Q. Do you know if there are metal vacuum caps other than the side seal used?

A. Yes.

Q. And what other types are used?

A. There is a closure known as a flowed-in compound. It is a rubber-type compound. It is deposited on a channel in the dome of the closure, and that closure may be a lug-type or it may be a screw-type or CT-type closure.

It is generally used for non-processed foods, and by that I mean such foods as jams or jellies or pickles or relishes or that sort of thing, where I believe I am correct in saying that all processed foods are packaged by a side seal, or you can have a lug or CT-type vacuum closure.

Q. Would that be the type that would be quite often seen on the shelves and marked twist-off? Is that a twist-off cap?

A. The twist-off closure is a top seal type of lug closure. The difference between the types that I have described [fol. 43] and the twist-off is that, as I mentioned, we use a flowed-in rubber type of compound. This compound is a polyvinyl chloride plastic.

Q. Now, is it your business to know and do you know the principal manufacturers of vacuum closures and principal manufacturers of vacuum-closing machinery?

A. Yes, I think I do.

Q. Could you tell me the names of the companies who manufacture vacuum closures?

A. Well, I mentioned—

The Court: What was that, manufacturers of what?

Mr. McManus: Vacuum closures.

The Court: All right.

The Witness: I mentioned Owens-Illinois Glass Company. The White Cap Company, as a subsidiary company of Continental Can Company, the Anchor Hocking Glass Corporation, and Crown Cork & Seal Company—

The Court: As you list them, will you do that a little more slowly so that I can follow you?

The Witness: Do you want me to repeat them?

[fol. 44] The Court: You have Owens-Illinois, White Cap, Anchor Hocking and Crown Cork & Seal, is that right?

The Witness: Yes, sir. And including the other types of closures, that is, the top seal, we would have Ball Brothers, Bernardin Metal Cap Company and the Hazel-Atlas Glass Company.

Q. These companies that you have listed, could you tell me the ones who are also manufacturing machinery to place the vacuum closures onto the glass container? I will read the names off and you can check them. Owens-Illinois—

A. Could I explain that?

Q. Yes.

A. Of that group that I named, Owens-Illinois, White Cap Company and Anchor Hocking make the side seal type of closure, and they produce machinery for applying that specific type of closure.

Crown Cork & Seal Company makes what is known as a cut rubber ring type of vacuum closure and they make a machine for that particular type of closure. I believe that Ball Brothers makes a machine, and that is the extent of my knowledge.

[fol. 45] Q. What type of closures do they make, side seal or a press closure?

A. It is a rubber top seal.

Q. And these are all vacuum closures, is that correct?

A. Yes, sir.

Q. So that the Bernardin Metal Cap Company and Hazel-Atlas Glass Company, to your knowledge, do not

make equipment for putting a vacuum closure on a glass container, is that right?

A. Not to my knowledge.

Q. Now, does the White Cap Company make equipment for putting on the twist-off closure?

A. Yes, sir.

Q. I believe you have testified that your company does not, is that correct?

A. We are currently not on the market with a twist-off closure.

Q. To your knowledge, does Anchor Hocking make equipment for putting a twist-off closure on a glass container?

A. Yes, sir.

Q. Can the side-seal closure that your company manufactures [fol. 46] be used on an Anchor machine?

Mr. Hughes: I am sorry, I do not quite understand that question.

Mr. McManus: I will rephrase the question.

Q. You make only side seal vacuum closures, is that correct?

A. Yes, sir.

Q. And you indicated that Anchor Hocking also makes side seal vacuum closures?

A. Yes, sir.

Q. And both of you make the machinery for putting these closures on the glass containers, is that correct?

A. Yes, sir.

Q. Can your cap be placed on the glass container, the side-seal cap, by Anchor's machinery for putting their side seal on glass containers?

A. I would have to express an opinion, but I believe that they could with certain modifications, but I am not sure.

The Court: In other words, if one has one of your machines you could not put the Anchor Hocking caps on without some modification, at least, is that correct?

The Witness: That is right.

[fol. 47] The Court: You could not just set it up and just start feeding Anchor Hocking caps?

The Witness: It would take a different feed measurement.

Q. Do you make this machinery at the New Jersey plant, the vacuum machinery?

A. We don't make it at either plant.

Q. Where do you make this machinery?

A. We make the machinery at our Godfrey, Illinois, machine shop.

Q. And that is the only plant that you have for making this type of machinery?

A. Yes, I believe so.

Q. Do you have customers west of the Rocky Mountains that use your machinery for this cap?

A. Yes.

Q. And you have customers in the East that use this machinery to put on the side seal caps?

A. Yes, sir.

The Court: When you come to a convenient point, Mr. McManus, we will take a brief morning recess.

Mr. McManus: This would be a good point right now, your Honor.

[fol. 48] The Court: All right, we will take a brief recess.

(Short recess.)

The Court: You may proceed, Mr. McManus.

By Mr. McManus:

Q. Going back to the vacuum closures, in what general category are vacuum closures usually used for?

A. To enclose a container where you wish to preserve food.

Q. Are they used primarily or almost exclusively for food containers?

A. There may be some exceptions, but I would say that the greater majority are used on food containers.

Q. If you know the number of vacuum caps which are sold in the United States, would you then be able to estimate the number of glass containers which contain food?

Mr. Hughes: Your Honor, I object to that.

The Court: All we are doing is asking if he can. Let us see what he says to that. Overruled.

Mr. Hughes: That calls for an answer yes or no. I take it?

[fol. 49] The Court: That is right; can he or can he not?

The Witness: I would have to amplify that beyond a yes or no answer.

The Court: Well, tell me what you think you could do with respect to this question if it were put to you.

The Witness: I would assume that there is a glass container used with each vacuum closure that is sold and that those glass containers were used for food, but there would be many other jars used for food in addition which would use other types of closures.

Q. The non-vacuum type of container, I take it from your answer, could be used for foods or non-foods?

A. Yes, sir.

Q. What is a metal cap normally made from, what type of metal?

A. Thinplated steel.

Q. Is it coated normally or uncoated?

A. I beg your pardon?

Q. Is it normally coated or uncoated?

A. I don't understand your question, sir.

Q. You say thin-plated steel—

[fol. 50] The Court: Mr. McManus, I think it would be better with this witness if you simply ask him to describe it. In other words, you have got a thing made of metal. Tell us what it is made of and what goes into it and what it is like.

Q. Well, you explained that it was made of steel with a thin coating, is that right?

A. Yes.

Q. Does a closure have different types of lines?

A. Yes, sir.

Q. And these lines vary for what purpose?

A. The protective qualities that it gives to the plate and the product that may be in contact with the closure.

Q. So that you have different lines for different products because of a number of factors?

A. Yes, sir.

The Court: I take it, for example, the acid-resistant quality would be one of the factors?

The Witness: Yes, sir.

The Court: What would be some of the others?

The Witness: Well, for example, on aspirin you wouldn't necessarily use any coating, or dry products of that type. For vinegar you might use one type of protective coating [fol. 51] and for mayonnaise you would use another. For baby foods you would probably still use another.

The Court: Each depending on the particular, let us say, corrosive characteristics of the product?

The Witness: Yes, sir.

The Court: Or non-corrosive characteristics?

The Witness: Yes, sir, and the coatings are also used as a rust-preventative.

Q. In your capacity as a vice-president in charge of caps and plastic containers, are you required or do you attend various association meetings or conventions?

A. Yes, sir.

Q. And what are some of those?

A. I don't quite understand.

Q. What are some of these conventions that you attend?

A. The Glass Container Manufacturers Institute and the National Canners Association meetings would be typical.

The Court: You attend both of those, do you?

[fol. 52] The Witness: Yes, sir.

Q. What is the purpose of attending the National Canners Association meetings?

A. To help our sales people—

Mr. Hughes: Your Honor, I object to this.

The Court: I will allow it.

The Witness: I have two purposes: to help our sales people further our relationship with our customers, and, in view of the fact that the steel people all attend those meetings and we are buyers of steel, I would like to visit with the steel people to find out the new things that are going on in that industry as a buyer.

Q. You have a two-fold purpose for attending the meetings of the National Canners Association, to buy and sell?

A. Yes, sir.

Q. Does your company display its equipment at these meetings?

A. No, sir.

Q. Do you have booths or anything of that nature?

A. Yes, we have booths.

Q. Have you observed any other manufacturers of clo-
[fol. 53] sures present at these meetings?

A. Yes, sir.

Q. Limiting ourselves to vacuum-type closures, who are some of the companies that would be represented at these meetings?

A. All that I have named previously, namely, the White Cap Company—

The Court: All right, we have a list of those.

Q. Are there other container manufacturers who attend these meetings?

A. Yes, sir.

Q. And who would some of those be?

The Court: Well, presumably, American Can would be there, and Continental Can, and the whole canning industry, wouldn't it?

The Witness: Yes, sir.

Mr. Hughes: At which one of these associations is he referring to?

Mr. McManus: National Cannery Association.

The Court: There is no doubt, is there, that they would go to those meetings?

Mr. Hughes: But he was talking about two associations.
[fol. 54] Mr. McManus: I have limited my question to the National Cannery Association. I haven't talked about any others.

The Court: You go there and you find at the National Cannery Association meetings representatives of all of the leading can manufacturers, don't you?

The Witness: That is correct.

Q. Now I would like to refer to the plastic side of your job. You have heretofore testified that you made high density polyethylene plastic containers, is that right?

A. Yes, sir.

[fol. 55] Q. Would you know the principal companies in the United States who make high density polyethylene plastic containers?

A. Yes, sir.

Q. And who would those companies be?

A. Plax Corporation—

Mr. Hughes: Your Honor, may we have some definition of "principal"? I understand this is an area where—this isn't a frivolous objection—I understand this is a considerable area when he is talking about companies in this field.

The Court: All right, now, you are talking about high density plastic containers.

Mr. McManus: I asked him does he know; who does he consider to be the principal producers and sellers of high density polyethylene plastic containers, and he started out and answered with Plax, and I would like for him to continue now.

A. (Continuing) The Continental Can Company, their plastic division, Injection Molding Company, Kansas City, which is now owned by the Rexall Drug Company, the Royal Manufacturing Company, which is now owned by the Celanese Corporation. There are many smaller companies, but those are the principal ones with whom we compete.

[fol. 56] Q. Now, I think you have testified heretofore that you are presently making high density polyethylene containers which are sold for people who are packing liquid detergents, is that correct?

A. That's correct, sir.

Q. To your knowledge has your company made any other type of container for packaging liquid detergents?

A. Yes, sir.

Q. And what type is that?

A. We made a glass container.

Q. To your knowledge what was the first type of container that liquid detergents came out to the public in?

A. To my knowledge a glass container.

Q. Does your company still sell glass containers for this purpose?

A. The containers to which I have been referring are used for the packaging of light duty liquid detergents, and to my knowledge we are no longer selling glass containers for that purpose.

Mr. McManus: Your Honor, at this point, if I could, I had asked Mr. Babcock to bring with him containers, de- [fol. 57] tergent containers in glass, metal and plastic, and

I would like, if I could, to exhibit^o them here so that he can show them to you.

The Court: All right, proceed.

Mr. McManus: Your Honor, I'd rather these not be marked, but just use them for demonstration purposes, because I am informed that the company no longer has this product or this sample—that Owens-Illinois no longer has this sample, and they would like to retain it if they could.

The Court: That is the one——

Mr. McManus: In glass.

The Court: That is the one called Joy, is it?

Mr. McManus: Yes.

The Court: They no longer have Joy, Owens-Illinois?

Mr. McManus: Well, not in a glass container, your Honor.

The Court: Well, now, let the record show that there are six containers lined up on the clerk's desk.

Going down the line, I take it the one on the right, which says Joy on it, is the glass container.

[fol. 58] Mr. Hughes: That is your Honor's right, to your Honor's right?

The Court: Yes, to my right. And then put the other Joy one next to it. And the next one proceeding from my right to my left, the next one is what, metal?

The Witness: Yes, sir.

The Court: Who makes that?

The Witness: I don't know who makes the can. Lever Bros. pack the product.

The Court: Yes, but you don't make the metal?

The Witness: No, sir.

The Court: Then the next one, two over, Joy, is the plastic one, is that right?

The Witness: Yes, sir.

The Court: Now, the bluish Lux can is plainly a metal can.

The Witness: Yes, sir.

The Court: And the thing entitled Ivory, is that plastic?

The Witness: Yes, sir.

The Court: And the Lux?

The Witness: Plastic.

[fol. 59] The Court: And those are all detergents?

The Witness: Those are light duty liquid detergents.

The Court: Liquid detergents.

And you make all the plastic bottles that are shown?

The Witness: I don't know whether those are specifically ours. They were taken from a store shelf, but we make that type of container, yes, sir.

The Court: All right.

By Mr. McManus:

Q. Could you tell me what company manufactures or produces Joy in the glass container?

A. The Procter & Gamble Company.

Q. And they have produced the Joy both in the glass and in the metal can and also that is their product in the plastic container also, is that correct?

A. Would you rephrase the question?

Q. They produce Joy, whether it was in the glass, can or plastic container, is that correct?

A. That is their brand name, yes, sir.

Q. Now, Ivory, whose brand name is that?

The Court: Before you leave that, is Joy, as far as you [fol. 60] know, sir, presently sold and marketed in glass and metal and plastic?

The Witness: To my knowledge, sir, it is no longer packaged in glass. They may be doing some packaging in tin, but I am not sure of that. But I positively know that they are packaging in plastic.

Mr. Hughes: Your Honor, could we have it clarified as to what kind of a detergent Joy is?

The Court: A light duty detergent. Do you want to go farther than that?

Mr. Hughes: A light duty detergent, right?

The Witness: Yes, sir.

The Court: How do you distinguish between light duty detergents and heavy duty detergents?

The Witness: Well, the light duty detergent is generally used in the kitchen for washing dishes, where the heavy duty detergent is used—

The Court: Industrial use?

The Witness: It is used in the laundry for washing clothes. It might be your own laundry or an industrial laundry.

The Court: All right.

By Mr. McManus:

What company packages the Ivory brand?

[fol. 61] A. Procter & Gamble.

Q. And the Lux brand?

A. Lever Bros.

Q. Now, I think you testified that Joy first came out in the glass container?

A. That's correct, sir.

Q. And you say, to your knowledge, they are not packaging it in a glass container any more, is that correct?

A. That's right.

Q. And what type of container replaced the glass container for Joy?

A. The metal container.

Q. You have indicated that you are not sure whether Joy is still packaged in a metal container or not, is that what you say?

A. That's right.

Q. At one time, to your knowledge, was that the principal way that Joy was packaged?

A. Prior to the plastic container, yes, sir.

Q. How long, to your knowledge, has Joy been packaged in a plastic container?

A. I think we made our first shipments in the spring of 1958.

[fol. 62] Q. Has the packaging of Joy in plastic containers increased?

A. I can't answer that, sir.

Q. Are you selling more plastic containers for Joy to Procter & Gamble than you were in 1958?

A. Yes, sir.

Q. Considerably more?

A. Yes, sir.

The Court: Let me see the three Joy containers.

(Handed to the Court.)

(A pause.)

The Court: All right, Mr. Clerk.

By Mr. McMahon:

Q. Now, going next to Ivory, prior to the packaging of Ivory in a plastic container was it packaged in any other type of container, to your knowledge?

A. Cans.

Q. Metal cans?

A. Yes, sir.

Q. And was it packaged in any other type of container before it was packaged in metal cans, to your knowledge?

[fol. 63] A. Not to my knowledge.

Q. Now, going to Lux, prior to its being packaged in plastic containers, was Lux light duty detergent packaged in any other type of container?

A. Metal cans.

Q. And prior to its being packaged in metal cans was it packaged in any other type of container, to your knowledge?

A. Not to my knowledge. I am speaking of liquids only.

Q. Yes. And we are talking about light duty detergents.

A. Yes, sir.

Q. Now, what is a heavy duty detergent, Mr. Babcock?

A. I cannot give you a technical explanation other than to say that it is marketed for the purpose of cleaning clothes in the laundry.

Q. Is your company selling any plastic containers for heavy duty detergents?

A. We are selling limited quantities for market test purposes.

The Court: What heavy duty detergents presently are those, as far as you know?

[fol. 64] The Witness: Well, there is one that has been market-tested by Procter & Gamble known as Gain.

The Court: What is it contained in?

The Witness: It is contained in a plastic bottle.

The Court: In a plastic bottle?

The Witness: Yes, sir.

Q. Was it marketed in some other type of container before it was put in a plastic container?

A. I can't answer that. I don't know.

Q. What other type of containers are heavy duty detergents marketed in, to your knowledge?

A. The product Wisk is packaged in a can similar to the Lux can in the exhibit.

Mr. Handler: Wiz?

The Witness: Wisk, W-i-s-k.

Mr. Handler: Could the witness speak up a little louder, please?

The Court: Yes, try to keep your voice up.

The Witness: Sorry.

Q. To your knowledge, were the heavy duty detergents ever packaged in glass containers?

A. I would answer the question no, but that might get into a classification that I am not familiar with.

[fol. 65] Mr. McManus: Now, your Honor, if the defendants, for any reason—I would like to move these down off there if I could—if the defendants want to look at them, they can take their time about it. Of course, what we would like to do is return these to the Owens-Illinois Company because they would like to have them back, if they could.

The Court: Show them to the defendant. Move them down to the defendants' table. Let the defendants have a look at them.

(Handed to defendants.)

The Court: You may proceed while that is going on.

By Mr. McManus:

Q. Now, you make high density polyethylene containers for other products?

A. Yes, sir.

Q. And would alcohol compound be one?

A. Yes, sir.

Q. Would this be an example of a high density polyethylene container that you manufacture for McKesson & Robbins?

A. Yes, sir.

Mr. McManus: Would you like to look at it?

[fol. 66] The Court: Yes, please.

(Handed to Court.)

The Court: Well, this formerly was made in glass, too, wasn't it?

The Witness: Yes, sir.

The Court: Do you know to what extent, at least in your company, as far as your company is concerned, plastic has replaced glass for rubbing alcohol and similar alcohol compounds.

The Witness: This is the only product and container, your Honor, that is currently on the market. There are others that are not on the market as yet, but are in process.

The Court: In work?

The Witness: In work, yes, sir.

The Court: So that you still, I take it, then, sell some or a substantial number, let's put it that way, of glass containers for alcohol or similar compounds.

The Witness: Yes, sir.

By Mr. McManus:

Q. You did testify, however, that you are in the process of other companies adopting—

[fol. 67] The Court: No, he covered that. Now we don't have to go into that again.

Mr. McManus: All right, I will withdraw it.

Q. You make high density polyethylene containers for certain drug products?

A. Yes, sir.

Q. Would this be an example of that (indicating)?

A. That is an example.

(Handed to Court.)

The Court: Do you know what this is, Comprin?

The Witness: No, sir, I don't. I believe it is a vitamin.

Mr. Hughes: I am sorry?

The Court: This is a phosphorous-free dietary supplement for deficiencies associated with pregnancy.

Q. Would this be another example of the type of high density polyethylene container that your company makes?

A. Yes, sir.

Mr. McManus: Would you like to take a look at it?

The Court: Yes.

(Handed to Court.)

[fol. 68] The Court: Both of these are made for Lilly, I take it?

The Witness: Yes, sir.

By Mr. McManus:

Q. Now, of these two containers, these two latter containers, could you tell me what type of container was used for this product prior to the use of high density polyethylene?

A. Glass containers were used for that type of product. I am not familiar with the labels to say that specific product was packaged in glass.

Q. Now, do you make other types of high density polyethylene containers, plastic containers?

A. I don't understand the question.

Q. In other words, we have here about five high-density polyethylene containers made by your company. Are there other types that you make?

A. All of those were not specifically made by our company.

Q. They were not specifically made by your company?

A. No, sir.

Q. Well, you are not sure which ones were and ones were not?

[fol. 69] A. That's right.

Q. To your knowledge are there other products, other than the ones we have here, packaged in high density polyethylene plastic containers?

A. Would you rephrase that question, please?

Q. Are there other products, other than the ones that you have here, packaged in high density polyethylene containers, to your knowledge?

A. Yes.

Q. Are there a number of them?

A. I would say the end uses at the moment are rather limited.

The Court: Could you give us an approximation of the number of end uses?

The Witness: No, sir, I could not.

The Court: Is it 50, is it 20, is it 5?

The Witness: Let's say a dozen.

The Court: A dozen? All right.

Q. And I think you testified before—I would like to get it straight—these high density polyethylene plastic containers are used for non-food products, other than food products?

A. Yes, sir.

Q. I wanted to ask you one other question, and that is in [fol. 70] regard to vacuum caps.

Now, you indicated, I believe, that most of the vacuum caps are made out of tin plate—I mean of steel coated with tin plate. Are there vacuum caps made out of any other type of metal?

Mr. Hughes; Any other type of metal, did you say?

Mr. McManus: Yes.

A. Yes, sir.

Q. And what type would that be?

A. Aluminum.

Q. Who is making that type of cap?

A. The Aluminum Company of America.

Q. Did they also make machinery for putting that cap on the glass container?

A. I understand they do.

Q. Do you know as a vacuum cap what type that is? Is it a CT, lug or side seal or what type?

A. It is known as the roll-on.

Q. Roll on.

A. Roll on.

Q. And is that a form of CT?

A. It is after the thread has been rolled in the closure, after the closure has been put on to the glass container.

[fol. 71] Q. Now, if you could explain for us how that thread is put on the cap?

A. Well, in the CT cap, which I previously described, the thread is rolled into the cap as part of the manufacture of the cap. In the case of the roll-on, the skirt of the cap is perfectly straight and plain. It is then put on to the glass container and a series of rollers matching the glass threads compress the skirt around the thread, forming the thread in the cap.

Q. I see. So one style of CT would be where the thread in the cap would be put in there when you are manufacturing the cap, is that correct?

A. Yes, it is pre-formed.

Q. And in the roll-on, the skirt is indented so that the finish on the glass container actually forms the thread in the cap?

A. Yes, sir.

Q. And the roll-on is the type that Alcoa is putting out?

A. Yes, sir.

Q. And do you know what product they are using this type of cap for?

[fol. 72] A. Well—

Q. Or products? Is there a number of them?

A. Yes, they use it for whiskey, for baby food, for drugs, many end uses.

Q. Now, I was talking about the Alcoa cap. Do you know what type of products they are enclosing with their aluminum cap?

A. I named them. Now, if you are talking specifically a vacuum type of aluminum roll-on, I would probably have to confine myself to that answer, baby food.

Mr. McManus: I have no further questions, your Honor.

Mr. Hughes: May I have just a moment, your Honor?

The Court: You may.

(Pause.)

Cross-examination.

By Mr. Hughes:

Q. Mr. Babcock, you have told us that you are the vice-president in charge of the closure and plastic division of Owens-Illinois, is that right?

A. Yes, sir.

Q. Now, on your direct examination you have used the term "plastic container," and I wonder if you would tell [fol. 73] us to what kinds of container you are referring when you use that term. What does the term embrace as you understand the term?

A. Well, I would say there are two general classifica-

tions, the pressed type of container which I mentioned as an example, a pill box, a powder box, a vial, in contrast to the blown type of container.

Q. And do you, in using the term, include or exclude a plastic flexible packaging?

A. We do not manufacture flexible packaging.

Q. Well, I realize that, but in your terminology do you exclude flexible packaging from the definition of a plastic container as you use the term?

A. Well, I would have to say that if you made a bag out of film that it is a container.

Q. But in your direct examination you were confining yourself to what I might describe as bottles or containers, small containers for holding capsules and things of that sort, is that correct?

A. As I recall the questions were asked what did Owens-Illinois make, so I believe that I did confine myself to that type of container which is the only types that we make.

Q. What kind of plastic packaging materials are there [fol. 74] that you know of?

A. Well, in addition to the pressed type of plastics and the blown type of plastics there are containers made from films; there are containers made from plastic laminates of plastic and film.

Q. Now, what are the raw materials from which plastic containers are made?

A. Well, they can be made from a number of materials. The polystyrene groups, of which there is what is known as the general purpose material, the impact materials, the heat-resistant materials. There is the low density and high density polyethylenes. Some containers are being experimentally made from delrin. There is the nylon group. There is the acetate group, the acrylic group.

Q. Now, I think the first grouping you gave me was the polystyrene group, and then the polyethylene group, is that correct?

A. Yes, sir.

Q. Now, do the raw materials for those two groups vary? Do you start with a different raw material?

A. I don't understand your question, Mr. Hughes.

The Court: Well, Mr. Babcock, you have to start some-

where. You are going to make plastic. What do you make [fol. 75] it out of?

The Witness: In the case of Owens-Illinois we make pressed plastic containers out of general purpose polystyrene and what is known as the impact grades of polystyrene.

The Court: What is polystyrene? Where do you get it? What does it look like? This sort of thing does not mean anything to me. Polystyrene might be a gas for all I know. Is it a solid, liquid? What is it?

The Witness: It is a solid, hard plastic.

The Court: Where do you get it from?

The Witness: Whom do we buy it from?

The Court: Yes.

The Witness: The Dow Chemical Company, Monsanto.

The Court: And they make it at the factory, do they?

The Witness: Yes, sir.

The Court: What does it come in, sheets?

The Witness: No, it comes in pellets, very small pellets which you then pour into your machine. The machine plasticizes or mixes this up into a jelly-like hot substance which is forced by pressure into a mold, and the result—

[fol. 76] The Court: What do they come in, big drums or something like that?

The Witness: Drums and bags.

The Court: So you pour the pellets into the mixer and they are mixed together?

The Witness: The process is that you inject a hot jelly-like material into a mold, and through a cooling process set up the part to make a hard, rigid container.

By Mr. Hughes:

Q. And what you have now described is the polystyrene container and the material from which it is made, is that correct?

A. That's correct.

Q. What about the material from which a polyethylene container is made? Do you start with a different raw material, a different source of supply for polyethylene?

A. Yes.

Q. That is, it is a different plastic to begin with.

A. It is a different plastic made by a different method.
[fol. 77] Q. Is the manufacturing process for a polyethylene container any different from the process for a polystyrene container?

A. In the pressed plastics field we use the same machines for pressing polystyrene and polyethylene. In the blown ware field we use a different process for making a blown type of container than a pressed type of container.

Q. Now, do you make any polystyrene containers at all at Owens-Illinois?

A. Yes.

Q. For what purposes do you make polystyrene containers?

A. Well, I mentioned that we make a line of vials which we sell through the wholesale druggist. We make powder boxes, pill boxes and that sort of thing.

Q. Will you describe to his Honor just how these are made? Is this the so-called thermo-setting type of container?

A. No. The materials that you are asking about are known as thermoplastic type of materials.

Q. They are?

A. Yes, sir.

Q. That is true both of polystyrene and polyethylene?
[fol. 78] A. Yes, sir.

Q. I see. But the process by which you form them into a container is different; you have a different process, is that correct?

A. Yes, sir.

Q. And in the polystyrene what is the process?

A. We shouldn't differentiate between the process by the material. We should differentiate whether you are pressing an article or whether you are blowing an article.

Q. Now, do you press polystyrene in your manufacturing activities?

A. Yes, sir.

Q. And will you describe to his Honor just what you mean when you say you press the polystyrene to form it into the container?

A. Well, I will repeat the description that I gave to him before. You buy this material in bags or drums in pellet form. It is poured into the machine, the injection molding

machine, by which it is known, and the material is then passed through a heating cylinder which heats it to a jelly-like substance, and with pressure it is forced into a mold [fol. 79] with a cavity and a force plug or pressing plug, and the article is pressed in that mold and is set up or made rigid through cooling.

Q. And what is the other method of making containers that you employ?

A. Blown.

Q. Blown. Now will you describe to his Honor how you make a container that is made by the blown method?

A. Well, the Owens-Illinois process is to feed this raw material into an extruder which is a machine with a large screw which homogenizes, heats up and puts the material into a jelly-like substance. It is then forced into what we call an injection head and forced into the neck ring in which the finish of the bottle is formed—that is the threaded portion, the neck opening.

The Court: It is like blowing up a balloon within a mold, isn't it?

The Witness: I am not there yet. The first thing you make is the finish of the bottle. That is the threaded portion. The head of the mechanism then rises and extrudes a tube, so that you have an injection molded finish and a tube [fol. 80] You then close the so-called blow mold around the tube and inject air and blow up the tube into the form of a container.

Now, other processes are what are known as the free extrusion process where they merely extrude a piece of tubing and a mold closes around that piece of tubing and it is blown forming the finish and the body of the container.

Q. And if I may repeat just to be sure that I understand this, the polystyrene containers that you make are by the first method and the polyethylene by the second method, is that a fair summary of it?

A. Mr. Hughes, I stated that you can press or blow polyethylene, and we have made containers on the injection method, the pressing method out of polyethylene. And we have actually experimentally made blown containers out of polystyrene. So you should not differentiate in the material, but in the end, that is whether it is pressed or blown.

Q. Is a polystyrene container, when it is finished, a more rigid container than a polyethylene container?

A. Generally speaking, yes, sir.

Q. Now, you have referred to both high density and low [fol. 81] density polyethylene containers. Do you make both types of containers, both the high and the low density polyethylene containers?

A. In the injection field we have made low density containers. In the blown field we have only made and marketed the high density polyethylene.

Q. Does that mean that you do not make the so-called squeeze bottle, squeeze-type bottle?

A. No, we do not.

Q. Are the methods which you have described, known as injection molding on the one hand and blow molding on the other, are those terms of art to describe those two methods?

A. Yes, sir.

Q. Now, are molds required in each of these processes?

A. Yes, sir.

Q. And do you make molds yourself for—

A. We make them and we buy them.

[fol. 82] Q. Can you tell me when or approximately when your company first became interested in plastic as a field for the making of containers or packaging material?

A. I think the first container that we made from plastic was during World War II.

Q. Had you done anything in plastic before World War II?

A. Not in containers but in closures.

Q. So that your first experience with plastic was in the closure field, is that correct?

A. Yes.

Q. When did you start making plastic closures?

A. I would say approximately 1934.

Q. Was that on an experimental basis or on a commercial basis?

A. A commercial basis.

Q. Will you tell us what materials are used to make plastic closures?

A. The type we started with were known as the thermo-

setting material. As I mentioned, in thermoplastic, you inject hot and you cool. In the case of thermosetting plastic you fill your mold with cold or warm material and you set [fol. 83] up a rigid closure.

In addition, to make the screw type, or Bakelite type of closure, as you probably would call it, we also make some closures from thermoplastic material.

Q. Are you still making the thermosetting type of closure?

A. Yes, sir.

Q. And having made these plastic closures, what was your next step in the plastic closure?

A. Well, as I mentioned, we did some experimental blow molding, I believe, for the Government during World War II.

Q. And then what?

A. I believe that following that experimental work, our first commercial venture in closures was approximately 1947 or 1948, and we started to make thermoplastic closures for vials.

Q. In all that time were you still making the thermosetting type of closure?

A. Yes, sir.

Q. And have you continued to make the thermosetting plastic type of closure since then?

A. We are currently making both.

[fol. 84] Q. Did there come a time when you acquired the ownership of a company that was in the plastic business?

Mr. McManus: Your Honor, I would like to object to the form of the question. Would Mr. Hughes define what he means by ownership? Do you mean 10 per cent or 1 per cent or 100 per cent?

The Court: We will leave that question until after lunch and let Mr. Hughes reframe the question at that time. We will now take a luncheon recess until five minutes of two.

(Recess to 1.55 o'clock p.m.)

[fol. 85]

AFTERNOON SESSION

(2.05 p.m.)

GEORGE S. BARCOCK, resumed.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Babcock, before the luncheon recess I think I asked you if there came a time when you acquired the Closure Service Company.

A. Yes. You didn't refer specifically to the Closure Service Company.

Q. I think that is correct. I was groping for the name when the recess came, but that is the company, isn't that correct?

A. Yes, sir.

Q. And with the acquisition of that company you established this Closure & Plastics Division, is that right?

A. Yes, sir.

Q. And then—

The Court: When was that?

Mr. Hughes: That was in 1934.

Q. Is that correct?

A. That's correct.

Q. And then you, in 1938, went into the blow molding—

Mr. Hughes: I withdraw that.

[fol. 86] Q. In 1938 you acquired certain patents, Lauterbach patents, is that correct?

A. Yes, sir.

Q. What did you do with reference to compression molding after the acquisition of the Lauterbach patents?

A. As I recall we acquired, with the Closure Service Company, what was known as flat-bed presses. Either in '37 or '38 or thereabouts, when we acquired the rights to the Lauterbach machine, we gave up the flat-bed presses, and then proceeded to manufacture compression molded caps of the thermosetting materials on the so-called Lauterbach machines.

Q. It was the same type of cap?

A. Yes.

Q. And the same type of material, but you had a different type of injection molding machine, is that correct?

A. Different type of compression molding machine.

Q. Compression molding machine. Now, from there in 1958 you went into the high density polyethylene, is that correct?

A. That's correct.

[fol. 87] Q. And made these polyethylene bottles that you have described to us, is that correct?

A. Went into the blow-molding.

Q. And that is the blow-molding?

A. Yes.

Q. Now you have told us of these uses for the bottles, and I am not going to repeat that again, but in connection with plastics do you find that there are certain disadvantages in plastics in certain end use areas?

A. Yes. As a comparison or—

Q. Well, my question was, are there some disadvantages in the use of plastics in certain end use areas?

A. Compared with other materials?

Q. Well, whether compared with other materials or not in comparison with other materials.

A. Well, let us say that we know that polyethylene, for example, is not a good barrier for essential oils; therefore—

Q. Would you describe to his Honor why that is?

A. Because it is permeable to gases.

[fol. 88] Q. Will you explain why that is?

A. Because it is permeable to gases.

Q. So that permeability in certain uses is a disadvantage, that is, permeability of the plastic, is that correct?

A. That is correct.

Q. Is there an element of so-called static electricity?

A. Yes.

Q. And would you describe that to his Honor, what the effect of the static electricity is?

A. Apparently after a period of time containers made from plastic do acquire or take on—I don't know the proper

phrase—but anyway they have a static electrical charge to them and they attract dust.

Q. And I take it that that is a characteristic that occurs regardless of any use to which it is being put, is that correct?

A. That is correct.

Q. And I take it that permeability, where it occurs, is never an advantageous characteristic, is that correct?

A. No, sir.

Q. No, it is not correct, or yes, it is correct?

[fol. 89] A. It is a disadvantage.

Mr. McManus: Your Honor, I would like to object. I think we are going beyond the scope of the direct on this line, and also I am not sure that he is so technically qualified in his background to testify to this other than in a very general way.

The Court: Well, he is the general manager of the plastics division and he ought to know enough about it to testify on these general subjects. I will overrule your objection.

Q. Now there are certain instances where the factor of taste and odor becomes a disadvantage in the use of plastics, is that correct?

A. Polyethylene has a taste and odor.

Q. Yes. And, for example, in the food field, is that a disadvantage factor, the taste and odor of the polyethylene container?

A. I would say it would be a disadvantage in those types of products where the transmission of odor or taste would be either harmful or objectionable.

Q. And actually you don't make any polyethylene plastic containers for the food field, do you, presently?

[fol. 90] A. Presently, no.

Q. Do you do anything in carbonated beverages—

A. No, sir.

Q. Are you making polyethylene containers for carbonated beverages?

A. No, sir.

Q. And is there any reason for that, or reasons?

A. Well, the trade has no interest in them.

Q. And can you think of any other reason why polyethylene containers are not used for carbonated beverages?

A. I would think that if you put carbonation in a plastic bottle, why, you would bulge the bottoms and you would bulge the sides and it would not be a satisfactory container for that type of special product.

Q. And any product that requires vacuum packing, are any of them presently packed in polyethylene containers?

A. Not to my knowledge.

Q. What is the drawback there?

A. You are talking about vacuum-packed food?

Q. Well, let us talk about that, yes.

A. Such as processed foods?

[fol. 91] Q. Yes, let us talk about that.

A. Well, there is a temperature limit to polyethylene. I don't think it would be satisfactory in the range of 240 to 250 degrees, which is the temperature at which many of these foods are processed and I don't think the container would stand up with that temperature.

Q. There is a type of filling known as a vacuum filling, is there not?

A. That is correct.

Q. Can you use that type of filling with plastic containers?

A. Yes, but inefficiently.

Q. But inefficiently?

A. Yes.

Q. What happens when you use that?

A. You would have to reduce the vacuum and slow down the filling.

Q. Otherwise you would distort the shape of the polyethylene container, is that correct?

A. That is correct.

Q. And would you say that transparency is an advantage where eye appeal is an important factor in the marketing of the product?

[fol. 92] A. That is a matter of opinion.

Q. Well, polyethylene tends to cloud that transparency, does it not?

A. Yes.

Q. It is translucent in some respects but certainly not transparent, is that right?

A. Now you are getting into a very fine area—

Q. But I think you follow me when I say "translucent"

and you also follow me when I say "transparent," do you not?

A. Yes.

Q. And you agree?

A. Yes.

Q. You told us that you made plastic closures, and at the risk of repetition, you said that you made the so-called press type of closure?

A. No, I said we compression molded thermosetting materials and we inject molded thermoplastic material into closures.

Q. Can you tell us what the end uses are for the plastic closures that you make?

A. The compression-molded closures we are selling for foods, cosmetics, household and chemical products—practically any use. We do not use them for processed foods. [fol. 93] The compression molded cap and the injection thermoplastic cap would be interchangeable for any one of those uses that I mentioned.

Q. Now are the metal screw type closures used also for these purposes that you have enumerated?

A. Yes.

Q. As a matter of fact, in these exhibits that you brought here today you do have some caps with the plastic cap and some caps with the metal, isn't that so?

A. That is correct.

Q. Now on your direct examination you discussed the so-called vacuum-type closure; do you recall that?

A. Yes, sir.

Q. And also the screw-type closure; do you recall that?

A. Yes, sir.

Q. And is it a fact that with the screw-type closure you do not put the closure through one of these vacuum machines that you have described; isn't that a fact?

A. We do not but we could.

Q. Well, whether you could or could not, you do not?

[fol. 94] A. At the moment, no.

Q. With the so-called vacuum-type closures, you do put them through one of these machines and have steam in the space between the product and the top of the container?

A. Yes.

Q. And at the present time all of your vacuum-type closures are the so-called side seal closures, is that correct?

A. Yes, but we have certain test packs that we have that are not commercially on the market, a top sealed vacuum type closure.

Q. Again going to the vacuum-type closures, they are machine-applied, are they not?

A. Yes, sir.

Q. The so-called screw-type closures can be and frequently are hand-applied; isn't that correct?

A. Well, they could be but they are not frequently; no, sir.

Q. They are hand-applied, are they?

A. They can be.

Q. And have been?

[fol. 95] A. I could say the same thing about the side seal closures too, that it could be applied by hand.

Q. But the vacuum-type closure has to be machine-applied, doesn't it?

A. For efficient operation, yes, sir.

The Court: If it is applied by hand, would you have a vacuum in it?

The Witness: We have a hand machine.

The Court: A hand machine?

The Witness: Yes, sir.

Q. Has it ever been used commercially?

A. For test packs, yes, sir.

Q. For test packs?

A. Yes.

Q. The test packs you do not regard as commercial packs but they are just experimental packs?

A. Yes, sir.

Q. Was it ever used commercially?

A. It may have been but I cannot specifically say.

Q. You wouldn't say that they have been?

A. No, sir.

Q. Would the speed of a vacuum-type closure machine be greater than the speed of a screw-type closure machine?

[fol. 96] A. Yes, sir.

Q. Would I be correct in saying that you can get 600 units a minute on a vacuum-type machine?

A. In the baby food sizes, yes, sir.

Q. And would you say that a speed of 300 a minute is very good for the screw-type closures?

A. In those sizes, yes, sir.

Q. And would you say that in any size the speed of the vacuum is substantially greater than the speed of the screw-type closure?

A. Yes, sir.

[fol. 97] Q. Now, you are aware of the fact that the White Cap Company makes a so-called twist-off closure?

A. Yes, sir.

Q. And that is a vacuum type closure as we have been defining that term?

A. Yes, sir.

Q. And are you aware of the fact that Owens-Illinois machines are presently being used by packers to apply White Cap twist-off caps?

A. Yes, sir.

Q. And are you aware that Anchor twist-off caps are presently being applied by packers with White Cap machines?

A. I have never seen it done, but I have heard so.

Q. You wouldn't dispute that it occurs?

A. No, sir.

Q. And the Crown Cork & Seal twist-off cap runs through a White Cap machine, does it not?

A. I don't know that.

Q. Again you wouldn't dispute it?

A. No, I would not.

Q. With your knowledge of the field there would be no impediment to doing it that you know of, is that correct?

[fol. 98] A. With minor modifications, as I mentioned before in the machines, I would believe that it could be done.

Q. And it could be done so that it would be commercially feasible to do it?

A. Yes, sir.

Q. It wouldn't surprise you to hear that it is being done?

A. No, sir.

Q. Are you aware of the fact that Owens' side-seal caps are being run commercially by processors through White Cap machines?

A. I believe they have been or are being. I can't specifically say where that is being done.

Q. Again it wouldn't surprise you if it were being done?

A. It could be done.

Q. There is no real commercial impediment to its being done?

A. No, sir.

Q. And in the baby food field, aren't you aware of the fact that there are Owens-Illinois side-seal caps being run through White Cap machines?

[fol. 99] A. As I say, I don't know specifically where, but it could be done.

Q. It is being done in the millions, isn't it?

A. No, I would not say that.

Q. Would it surprise you if that were the fact, if that turned out to be the fact?

A. No, it would not.

Q. Now, in the marketing of your containers do you sell f.o.b. factory?

A. Which containers?

Q. Polyethylene containers.

A. The high density polyethylene containers, yes.

Q. And you sell f.o.b. factory, 30 days net, is that right?

A. Yes, sir.

Q. And does the industry generally sell that way?

A. To my knowledge they are meeting our competition.

Q. And, incidentally, is the competition in this field keen and vigorous?

A. Yes, sir.

Q. And how many companies would you say are in the business of making the kind of containers that you make?

[fol. 100] A. I testified earlier that there were five or six, as I recall. How many small ones I said I did not know, but there were several.

Q. Would there be many?

A. Yes.

Q. Would there be as many as a couple of hundred?

A. I wouldn't know that.

Q. Now, how many companies are there in the business of manufacturing plastic closures?

A. Two or three dozen, I would guess.

Q. And how many companies are there in the business of manufacturing metal type closures?

A. About the same number. Maybe not quite as many. Say a dozen and a half to two dozen.

Q. Maybe more than two dozen?

A. Maybe.

Q. In asking you about manufacturers of metal containers I meant to confine myself for the moment to screw type closures. How many manufacturers are there of screw type closures that you know of?

A. I would say a dozen and a half.

Q. Aren't there many more than that?

A. There could be.

[fol. 101] Q. Now, you told us that you sold f.o.b. factory for these polyethylene bottles. Is that the way you buy your raw material for those bottles?

A. No, sir, our raw material is delivered.

Q. That is a delivered price?

A. Yes, sir.

Q. For that type of container?

A. Yes, sir.

Q. Do you equalize freight with any glass container plants in pricing your polyethylene bottles?

A. No, sir.

Q. Or with any plants where tin cans are manufactured?

A. No, sir.

Q. Do you make any sales to jobbers?

A. No, sir.

Q. And would you say that your market for your plastic containers was a national market?

A. Yes, sir.

Mr. Hughes: Your Honor, may I just have a moment to confer with my associates?

The Court: Yes.

(Pause.)

Q. Mr. Babcock, I don't want any specific figures, but [fol. 102] could you give us approximately the percentage of your detergent sales to your total sales of polyethylene containers?

A. I don't know the figure, but they are substantial.

Q. Can you give us a range, a possible range? I don't want to press you if you don't think you can.

A. I don't know.

Q. Now, is the competition in the sale of closures that you have testified that you make keen and vigorous?

A. Yes, sir.

Mr. Hughes: I think that is all, your Honor.

The Court: All right. Redirect.

Redirect examination.

By Mr. McManus:

Q. Mr. Babcock, how did you acquire the Lauterbach patents?

A. I can't answer that question. I don't know.

Q. Now, you answered that plastic containers were translucent. Are glass containers also translucent, some glass containers?

A. Some glass containers are, yes, sir, as my understanding of translucency goes.

[fol. 103] Q. What is your understanding of translucent?

A. Well, those that are not made of crystal clear material, I would say, such as amber glass, green glass or opal glass. I wouldn't call those transparent. I would call them translucent.

The Court: In making glass bottles, Mr. Witness, do you, on occasion, produce colored glass of one kind or another because of the reaction of the substance contained in the container to light rays?

The Witness: Yes, sir.

The Court: What sort of substances? Can you give me an example of the substances?

The Witness: The best example would be household bleaches or sodium hydrochloride solutions.

The Court: You put those in brown or greenish bottles?

The Witness: Yes, sir.

The Court: All right.

Q. Now, are your plastic closures used in food processing where you want to insert a vacuum?

A. No, sir.

Q. Are the plastic closures used in food processing where you have high heat, two, three hundred degrees?

A. I can't specifically answer that, but I would say no.

[fol. 104] The Court: Try to speak up now. Every once in a while you have a tendency to drop your voice.

The Witness: I'm sorry. I will try to lean forward.

Q. You have indicated that with modifications it is possible to run your vacuum closures through a White machine?

A. Yes, sir.

Q. And when pressed, you answered that there may or may not be a million of your closures that go through a White machine?

Mr. Hughes: I said millions, millions.

Q. Let me ask you. I thought you said million. You don't know if there are a million or millions that go through White machines, do you or don't you?

A. I don't know.

The Court: How extensive, Mr. Witness, is the modification of the White machine to take your closures or of your machine to take White Cap closures?

The Witness: In the case of the White machine they are fed from a hopper into a feeding device which is pretty much a slot or a channel, and in our case the caps are stack-fed; [fol. 105] they are put into a stack from a paper stack, and there is a device that goes around the circle and drops each cap, and you have to change the feeding device.

The Court: Well, now, the way you put it doesn't mean very much to me. I don't know if that is a major change in the machine or a minor change or how important it is. What part of the machine, percentagewise—what part of the mechanism is comprised in the feeding device?

The Witness: Well, I believe that we can feed the Owens-Illinois caps through the White machine with very, very minor modifications.

The Court: I see.

The Witness: But to feed the White Cap through the Owens-Illinois machine would require the removal of the stack-feed, the addition of a hopper and the addition of a feeding device.

The Court: If you changed those elements what, roughly,

would be the proportion that the modification bore to the machine as a whole, in terms of cost?

The Witness: Well, I would estimate that our machines cost, depending on the size, from, say, 12 to 25,000 dollars. [fol. 106] I would estimate that the cost of the hopper and the other changed parts would probably be in the range of a thousand to fifteen hundred dollars. These are pure estimates.

Q. Now, as you said, you did not know if a million or millions of White Caps were running through your machines, is that what you said?

A. That's correct.

Q. In fact, do you have an opinion of whether it is normal for a company to use both the cap and the closing equipment from the same company?

Mr. Hughes: Well, I object to the form of the question.

The Court: Sustained.

Q. Now, you have also testified that a number of companies are making caps. Approximately how many companies are making the steam type vacuum cap, to your knowledge?

A. I previously testified that there are three making—

The Court: Mr. McManus, haven't we gone all over this ground?

Mr. McManus: If he could just answer this one question I am finished, your Honor.

[fol. 107] The Court: All right.

A. I previously testified there were three companies making the side-seal type of vacuum closure, and I think I mentioned two or three others that were making the top seal type of vacuum closure which may or may not be applied with steam.

Mr. McManus: That is all I have.

The Court: All right, Mr. Witness, you may step down. Thank you.

(Witness excused.)

[fol. 108] CHARLES OLIN BALL, called as witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Dr. Ball, where do you reside at the present time.

A. Beg pardon?

Q. Where do you reside at the present time?

A. New Brunswick, New Jersey.

[fol. 109] Q. What is your current position?

A. Head of the department of food science at Rutgers University.

Q. And how long have you held that position, sir?

A. I have been a professor at Rutgers for 11 years. I haven't been the head of the department all that time.

Q. How long have you been head of the department, sir?

A. Less than a year.

Q. Now, what is your educational background, sir?

A. I have the AB, BS and Ph.D degrees all from George Washington University.

Q. And did you have a specialization, sir?

A. I beg pardon?

Q. Did you have a specialization, sir?

A. In education, you mean?

Q. Yes, sir.

A. I specialized in chemistry, mathematics and electrical engineering.

Q. Sir, just for the moment turning your thoughts back to 1919, were you employed by the National Canners Association at that time?

[fol. 110] A. I was.

Q. And did your employment continue through 1922 with that association?

A. It did.

Q. Could you describe for us your work, duties and responsibilities during that period of time at the Association?

A. It was research work consisting of studies, experimental and theoretical studies of principles of sterilization of canned foods.

Mr. Hughes: I am sorry, I didn't catch that.

The Court: Dr. Ball, we have to make those gentlemen way over the other side of the courtroom hear. Will you try and project your voice?

The Witness: I will try, sir.

Mr. Hughes: May I have that last answer?

The Court: Yes.

(Answer read.)

[fol. 111] Q. Have you completed your answer?

A. Yes.

Q. Now, you used the term "canned foods" in your testimony. Would you define that term for us?

A. The canned foods, as I used the term, means foods that have been sterilized and packaged in airtight containers for storage and distribution; the airtight container being required to prevent any contamination of the foods after they have been sterilized.

Q. You referred to the term "airtight container." What is the definition of that term, sir?

A. It is a container which is proof against the passage of air or any gas through the wall of the container, either inwardly or outwardly.

Q. And what type of containers were you referring to, sir?

A. The containers used for canned foods are metal cans and glass containers.

Q. Sir, have you been associated in any other capacity with the National Cannery Association since 1922?

A. Yes. I have been a member of various committees, [fol. 112] and since 1945 I have been chairman of the committee on the processing of foods in glass containers.

Q. Sir, could you give us a thumbnail description, if you will, of the type of organization that the National Cannery Association has been during your experiences with them?

A. Well, it is a trade association having as its members the packers of canned foods. Their principal function is to assist their members in any way possible, and one of the principal functions is to carry on research work for the members.

Q. Sir, directing your attention now to the period which occurred just a few years later, were you employed by the American Can Company from 1922 to 1941?

A. I was.

Q. And in that long period of time, sir, would you describe your work, duties and responsibilities during that period?

A. During the first part of the period I was engaged in work very similar to that that I had with the National Canners Association. As time went on my sphere of work broadened, and in the early thirties I was made associate director [fol. 113] of research and was then interested in not only the processing of foods but the manufacture of cans also.

Q. And with American Can did you work at any time in glass containers?

A. We did occasionally have glass containers in the laboratory, yes, to study them in comparison with food in metal cans.

Q. Could you describe for us the type of work you did with those two types of containers, in a general way?

A. Well, there would be a study of the containers, as we studied cans, for their hermetic properties, that is, airtight properties, and also for the condition of the food as to quality and as to sterilization.

During this same period, I think between 1926 and 1928, I was on—I don't mean during all that time but during a period within that range of time—I was on a mission to California at the request of the California Board of Health to work with technical men of what was then the Glass Container Association in studying the processing of glass containers [fol. 114] and the establishment of processes for foods in glass containers. And then during 1929, for about almost two months, I was on another mission for the California Board of Health to establish sterilizing processes for both metal and glass containers for the State of California.

Q. Could you tell us the foods and beverages which were contained in the glass containers which you worked with at American Can?

A. They were essentially fruits and vegetables, and also it included coffee and beer.

Q. Have you exhausted your recollection, sir?

A. Well, I couldn't say for sure; I think there would have been or there were also some animal products such as marine products and meat.

Q. Sir, were there syrups in the glass containers in your laboratory then?

A. Well, I don't recall that. I don't think if there were that I would have had directly to do with them.

Q. Sir, I believe you stated that at the present time you are chairman of the National Canners Association Committee on Processing Foods in Glass Containers. Have you been [fol. 115] employed in that position or have you been in that position from 1945 to the present?

A. I have.

Q. Could you describe for us the duties, work and responsibilities which are entailed and have been entailed by this position from 1945 to the present?

A. This committee meets periodically. When I say periodically I mean whenever the necessity arises, in order to keep up to date the information that has been assembled on the processing specifications of foods in glass containers, and my function has been to preside over those meetings.

Mr. Greenberg: Your Honor, I would like to direct your attention now to Government's Exhibits 317 and 318 which I think will be referred to in the next series of questions.

Mr. Hughes: I object to referring to any documents which are not in evidence.

The Court: Let me see the documents.

Mr. Greenberg: I am merely trying to direct your Honor's attention to the book involved in order to lay a foundation for it, if I may, for its admission.

Mr. Hughes: I am sorry, I did not hear that.

[fol. 116] Mr. Greenberg: I intend to show the witness the document in order to lay a foundation for its admission.

The Court: All right. Wait until the clerk gets my copy of it.

Q: Dr. Ball, I show you—

Mr. Hughes: Will you wait just a moment while we get our copy?

The Court: We will take a brief recess while Mr. Hughes is doing that.

(Short-recess.)

The Court: Gentlemen, hereafter I am going to require each of you, five or ten minutes before the opening of each session, to advise the other side as to what documents you expect to use during the course of the session. I do not want in the course of this trial anybody to have to take a recess to look at a document among the mass of documents that we have here. It is a very simple matter to give the other side a list of the documents that he expects to refer to so that they can have them available and in front of them when the questioning begins.

Mr. Hughes: Your Honor, in cross-examination a situation may arise—

[fol. 117] The Court: Well, I don't think that this is an absolute rule. There may be occasions, Mr. Hughes, where an occasional document is not there. I am talking about it as a general matter.

Mr. Hughes: Yes, your Honor.

Mr. Greenberg: Now, your Honor, the Government will certainly follow the procedure that you have outlined.

The Court: Fine.

Q. Dr. Ball, I show you Government's Exhibit 317, which has been marked for identification, and ask you if you recognize it?

A. I do.

Q. Do you know how this document was compiled?

Mr. Hughes: I object, your Honor, to any questions with reference to these exhibits. May I say that the attorneys have seen this for the first time on May 25th. These were the last documents that the Government submitted to us in their order of proof. We are totally unprepared to deal with any examination or cross-examination of this witness which may relate to these documents. It is violative of the order of proof and of our pretrial discussions. I submit [fol. 118] that it is improper at this point and under these circumstances to go into these documents.

Mr. Greenberg: May I be heard, your Honor, for a moment?

The Court: Yes.

Mr. Greenberg: Your Honor, the Government only intends at this juncture to lay a foundation for the introduction of these documents. We do not intend to argue with

respect to these documents. The witness is here, your Honor, and we propose to show that he knows how these documents were compiled and we merely wish, as I stated before, to lay the necessary foundation for the introduction of these documents.

The Court: Suppose Mr. Hughes wants to examine on the voir dire with respect to the introduction of the documents—

Mr. Hughes: Absolutely, your Honor.

The Court: He tells me that he has seen—when did you see these for the first time?

Mr. Hughes: May 25, your Honor, and I might say quite candidly that we have been concentrating on those things which the order of proof indicates we should be concentrating on. This is replete with figures and it has maps and all [fol. 119] sorts of things in here as to which we are totally unprepared.

For all I know, there may be very valid reasons why they are inadmissible on any conceivable ground.

The Court: All right. In any event, I will permit you, Mr. Greenberg, to go ahead with your direct examination laying the basis for these documents. At the conclusion of that I will hear Mr. Hughes and then see what he wishes to do in the way of objecting at that time.

Mr. Greenberg: Thank you, sir.

Q. Dr. Ball, do you know how Government's Exhibit 317 was compiled?

A. Yes, sir.

Q. Would you describe for us how this document was compiled?

The Court: Did you have anything to do with it yourself, Dr. Ball?

The Witness: Yes, sir.

The Court: What was your function in connection with this document?

The Witness: This document was compiled by the committee for the study of processing of foods in glass containers of which I am the chairman, your Honor.

[fol. 120] The Court: Very good. Now you may answer Mr. Greenberg's last question.

(Question read.)

A. The document was compiled by the committee as a result of the deliberations and study that the committee conducts in its meetings, and at other times as the members of the committee conduct them in the laboratories of the canning industry.

Mr. Hughes: I am sorry, I did not hear that.

A. In the experimental work of the members of the committee as they are conducted in laboratories of the canning industry. And when the bulletin is compiled it is submitted to the National Canners Association's publication department for publication, for printing.

The Court: Who are the other members of the committee besides you, Dr. Ball?

The Witness: There is Mr. Scott of Owens-Illinois Glass Company; Mr. Feluciofi—I don't know whether I can spell the name—of Anchor Hocking, and Mr. Bee of the National Canners Association; Mr. Reed of the National Canners Association. At the moment, your Honor, I can't think of the other members.

Q. Were there others, sir?

[fol. 121] A. There were, I think, about two others.

Q. Can you generally describe them for us—what type of organizations were they affiliated with?

A. Well, each glass container company has a representative, I think, and they would be from the other glass container manufacturers.

The Court: Representatives from the various glass container manufacturers?

The Witness: Yes, sir.

The Court: Can you describe what their functions are with their respective companies?

The Witness: They are all in scientific research.

The Court: They were from their research departments?

The Witness: In the research departments, yes, sir.

Q. Sir, after this document was compiled, did you become familiar with the uses to which it was put and has been put since its publication?

A. In the earlier editions of the bulletin I have been in

the field observing the use of the bulletin, yes, but not in recent years.

Q. During the period when you had direct knowledge of [fol. 122] what occurred, can you in a nutshell, so to speak, tell us what uses were made of this publication?

A. It is used as a guide by packers of food in glass containers in the operation of their sterilizing retorts.

Mr. Greenberg: The Government offers G-317 into evidence.

Mr. Hughes: I object to it on the ground that it has not been properly proved; on the further preliminary grounds that I urged upon your Honor that we have adequate opportunity to examine it or to examine this witness.

The Court: I will tell you what I will do: I will take it at this point subject to a motion to strike by you and with the right to reserve to you to examine on the voir dire with respect to it. If I find that on such an examination you develop that a proper foundation has not been established for the admission of the exhibit, I will then consider your motion to strike.

(Marked Government's Exhibit 317 in evidence.)

The Court: I take it that this is, in effect, a handbook for [fol. 123] food processors or canners, is that right, a technical handbook?

The Witness: You can call it a processing manual, I think. It is a technical handbook, giving specifications and time and temperature; also directions for the operation of the processing equipment.

By Mr. Greenberg:

Q. Dr. Ball, I show you Government's Exhibit 318, which is before you, and which has been marked for identification, and ask if you can identify it for us?

A. I can.

Q. Would you identify that document, sir?

A. That is a bulletin of the National Canners Association which is analogous to the one we have been discussing, but this pertains to metal containers.

Q. When you say analogous, you mean the bulletins are analogous, is that right?

A. It is a processing manual for processing food in metal containers—for sterilization of food in metal containers.

Q. By virtue of your experience—

Mr. Hughes: Your Honor, I don't want to interrupt the examination, but may it be understood that I am maintaining [fol. 124] the same objection to this?

The Court: Oh, yes.

Q. Sir, by virtue of your experience with the National Canners Association and in other positions which you described have you become familiar with the method of compilation of Government's Exhibit 318?

A. I have.

Q. And would you describe for us, sir, how this document was compiled?

A. Well, from my personal experience that was before I became a member of the committee pertaining to glass containers. I was a member of the committee on processing of food in metal containers, and this bulletin is compiled by that committee in the same manner as I described for the other bulletin being compiled by the former committee.

Q. And are you familiar with the uses to which this bulletin is put?

A. I am.

Q. And would you describe for us, sir, the uses to which this bulletin has been put?

A. The operators of the sterilizing equipment in canning plants use the bulletin as a guide in method of operation [fol. 125] of the equipment and in establishing the temperature and time specifications for sterilizing processes.

Mr. Greenberg: The Government offers G-318 into evidence, your Honor.

The Court: Before you do this—Dr. Ball, tell me, if you know, what is the distribution of these bulletins?

The Witness: Well, the distribution, your Honor, in the first place, is to all members of the National Canners Association.

The Court: They are sent out by the Association to its members, is that right?

The Witness: Upon the issuance of each bulletin a copy is sent to every member, but the distribution is really

broader than that. They send it also to other canners besides the members, and to institutions that are interested in the processing of food.

The Court: Would they send this sort of thing to something like the United States Army who is interested in purchasing food and so forth?

The Witness: If the agency of the Army is directly interested in the operations of sterilization, yes, sir.

By Mr. Greenberg:

Q. Does your description of the uses and distribution of this bulletin, which is marked G-318, equally apply to the prior bulletin on glass containers?

A. To the prior bulletin?

Q. Yes. Is that distributed in the same way?

A. Same way, yes.

The Court: You have an objection, Mr. Hughes?

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 318 received in evidence.)

Q. Now, sir, just changing the subject for a moment, through your experiences in the food processing industry which you have described, have you found any common physical characteristics which are shared by cans and glass containers?

A. Well, the characteristics—

Q. Yes or no, sir? Have you found—

A. Yes, I have.

Q. You have. And would you tell the Court, sir, what [fol. 127] these common characteristics are and have been?

A. The two principal characteristics, physical characteristics, and the most important are that each type of container is a rigid container; that is, it maintains its shape in resistance to forces that might tend to distort it, and each is a hermetic container; that is, airtight.

Q. Can you recall any others, sir?

A. Well, when they are filled and subjected to processing, each of them has the property of resisting the penetration of heat into the can. In other words, there is a time lag in penetration of heat into the product in both of them.

Q. Why is that important?

Mr. Handler: Just one moment.

The Court: Have you got something to say, Mr. Handler?

Mr. Handler: A half-dozen words of the witness cannot be heard back here, your Honor.

The Court: All right. Try to project your voice.

The Witness: I am very sorry, your Honor. I seem to have some laryngitis today.

[fol. 128] The Court: You do the best you can.

The Witness: I will do the best I can.

Mr. Handler: May we have that last answer?

The Court: The reporter will read the last answer.

(Last answer and question read.)

A. Well, that is one of the determining factors in establishing the length of a process.

Q. Sir, can you recall any other common characteristics between these two types of containers, referring now, for example, to the metal parts of both types of containers?

A. Well, many of the metal parts of both types of containers carry protective coatings of various kinds inside and outside, sometimes.

Q. What type of protective coatings are you referring to, sir, just generally?

A. Well, to describe it as briefly as possible, I would say the types that Mr. Babcock testified about this morning. They are coatings which are made to suit the characteristics of the product in the can or in the container and are for the purpose of resisting action of the product on the metal.

[fol. 129] Q. Can you recall any others, sir? Are there others?

Mr. Greenberg: Withdrawn.

Q. Can you recall any others, sir, referring now to the gaskets?

The Court: To the what?

Mr. Greenberg: Gaskets, g-a-s-k-e-t-s, your Honor.

A. Well, each of them has a gasket in the seal between the cover and the body of the container. Those gaskets differ quite a lot. There is a different type of gasket in glass

containers than there is in cans, as a rule. The seal of the can, the one that fastens the cover to the body of the can, is a crimp seal or a hook seal which is called a double seam. That gasket is very thin and changes its shape greatly when the seam is being made.

As a rule the gaskets in caps of glass containers are heavier and not subject to similar changes in shape, that is, as great changes in shape as they are in cans.

Q. Now, sir, you referred to one common characteristic during your testimony, the hermetic qualities of these containers. Do you recall that, sir?

[fol. 130] A. Yes.

Q. Now, would you define for us, sir, what that term means? What does hermetic mean?

The Court: Didn't Dr. Ball at the outset of his testimony define hermetic for us?

Mr. Greenberg: I believe he did, sir, but it is the foundation or the orientation for another question. I will withdraw it if you would like me to.

The Court: Go ahead.

A. Hermetic is another name for airtight which means that there is absolute prevention of any passage of air or other gas through the wall of the container or any part of the wall of the container, either inwardly or outwardly.

Q. Now, sir, what value does this characteristic have in food processing and marketing?

The Court: Well, now, let's not confuse processing and marketing.

Mr. Greenberg: I will divide the question, sir.

The Court: Start off with processing. If we are going to talk about marketing, that is something else again.

[fol. 131] Mr. Greenberg: I beg the Court's pardon. I will reframe the question.

Q. What value does this characteristic have in food processing, sir?

A. Do you refer to the process of sterilization?

Q. Yes, sir.

A. Well, the hermetic property of the can has no particular reference to the process of sterilization. There are processes of sterilization in which the food is sterilized.

before it is ever put into the container. Where the container is hermetically sealed during the process it is a matter of convenience and simply because it is desirable and necessary to have the hermetic properties after the process is completed, and—well, that covers the processing part.

Q. Now, sir, why is it necessary to have hermetic properties after the container encloses the food product?

A. It is necessary in order to prevent recontamination of the food with any agent that is capable of spoiling the food, such as microorganisms of the air or even oxygen of the air which has the ability to spoil the food in certain respects.

[fol. 131a] Q. What types of contamination are you referring to specifically, sir?

A. Primarily the contamination with microorganisms which cause fermentation or spoilage of the food, although, as I say, also oxygen which may promote chemical deterioration of the food.

[fol. 132] Q. Sir, what value does this hermetic characteristic which is shared by cans and glass containers have in the marketing phase?

A. Well, it continues the protection of the food against contamination. Other than that, it is merely the advantage or the function of a container which is tightly sealed and will hold its contents properly.

Q. Sir, does a food which is hermetically sealed in a hermetic container and sent out to the grocery stores and the institutions' shelves, does that require some refrigeration or some temperature consideration for long storage?

A. It does not require it, but the preservation of its quality is improved if it does have refrigeration.

Q. I understand that, sir, but it does not require it, is that correct?

A. It does not require it, no.

Q. Sir, referring now to paper containers, for example, does that type of container have the hermetic characteristics of cans and glass containers?

A. You say paper?

Q. Paper, sir.

A. No. I think there is no paper container that is absolutely impervious to gas.

Q. In other words, when you say absolutely, you are talk-

ing in terms of absolute, the term used in the examination?

A. To the degree that you find in metal and glass.

Q. Sir, have there been any containers, any containers that you know of from 1919, the time of your initial position in the industry, from that period of time to the present time which have this hermetic characteristic of a can and a glass container?

A. Not to an equal degree.

Mr. Greenberg: Thank you, sir. You may cross-examine.

Mr. Hughes: Your Honor, we have reached this point again where we just feel that we are unprepared to cross-examine. This is a very important area.

The Court: Yes, I will not compel you to go ahead with cross-examination this afternoon under the circumstances. I think you have been surprised by the presence of this witness here today, since you only heard of his presence here on Saturday, as I understand it. Is that so?

[fols. 134-313] Mr. Hughes: Yes, sir, that's right.

[fol. 314] JOHN PRESTON LEVIS, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Levis, by whom are you employed?

A. Owens-Illinois Glass Company.

Q. And what is your position with that company?

A. Chairman of the board of directors.

Q. Does Owens-Illinois Glass Company have operations outside of the United States as well as domestic operations?

A. Yes, sir.

Q. I would like it understood, then, that any questions that I would ask you today would refer to your domestic operations only.

A. Yes, sir.

The Court: Mr. Levis, how long have you been chairman of the board?

The Witness: Nine years.

Q. Could you tell me, sir, your background with the [fol. 315] Owens-Illinois Glass Company?

A: I started with the Illinois Glass Company in 1924 as an engineer in the Alton plant. I went from there as the manager of our plant in Gas City, Indiana. Following a merger between Owens Bottle Company and Illinois Glass Company I was transferred back as plant manager at the Alton plant. 1932 I was transferred to the Pacific Coast as president of our Pacific Coast subsidiary, back to Toledo in 1938 as the general manager of the parent company operations. I became president in '41, chairman of the board in '50.

The Witness: I beg your pardon, sir, it is ten years, not nine.

The Court: All right.

Q. In what major product groups does the Owens-Illinois Glass Company sell its products?

A. I beg your pardon?

Q. What products does Owens-Illinois sell, major products?

A. Glass containers is our largest product. The next largest product is in the fibreboard container, both paper and boxes. The third largest division is in scientific glassware, including television tubes. We also sell closures and tableware, tumblers and tableware.

[fol. 316] Q. The Owens-Illinois Glass Company is not engaged, then, in what is commonly known as flat glass?

A. No.

Q. You are a container company as differentiated from a—

A. We have a building material in a glass block, but that is a small segment of our business.

The Court: Are you in the plastic field at all?

The Witness: Oh, I beg your pardon, I left that out. We are in the plastic field both in closures and plastic bottles.

Q. Now, referring to the glass container plants of your company, how many plants are you presently operating?

A. I would have to name them.

Q. Could you do that, sir?

A. I would have to name them. I can't remember exactly. Bridgeton, New Jersey, Clarion, Pennsylvania, Atlanta, Georgia, Alton, Illinois, Gas City, Indiana, Streator, Illinois, Waco, Texas, Los Angeles, Seattle, Portland. I don't think I left out—oh, Columbus—no, no, that is not a glass container.

[fol. 317] Q. Now, in the organization of your company is the glass container a separate division from paper containers?

A. The glass container operation is a separate division, yes, sir.

Q. Could you explain to us generally the organization of your company?

A. We have an administrative division which handles those matters which pertain to all divisions; general accounting, general purchasing, legal, and others of lesser importance; and all other divisions have their own separate general managers who operate like a president of the division. If it is a subsidiary we usually give him the title of president. If it is not a subsidiary and merely a division, he acts in that capacity.

Q. But you say there is a glass container division?

A. There is a glass container division, yes, sir.

Q. Do products such as caps and vacuum cleaners come under that division?

A. They report—the general manager of the closure and plastic division reports to the division vice-president who is [fol. 318] in charge of our glass container operation generally.

Q. Now, is the glass container division broken down geographically at all?

A. We have a Coast Division and we have an Eastern Division, yes, sir.

Q. What is the Coast Division, is that the Western Division?

A. I did not get that.

Q. When you say the Coast Division, would that be the West Coast Division?

A. That is the West Coast Division, yes, sir.

Q. And generally what area does that encompass?

A. Well, the bulk of the sales are in the three Coast States, California, Oregon and Washington. I cannot define the

exact territories but I am sure they go as far as Salt Lake City and that would cover Nevada and possibly the western end of Montana. I am not sure exactly how that is laid out.

The Court: You take in, in other words, a segment of the Western Rockies, is that right?

The Witness: That is right.

Q. And you said also that you have an Eastern Division? [fol. 319] A. That is the way we define them for management purposes, yes, sir.

Q. The Eastern Division would include the rest of the United States?

A. Yes, sir.

Q. And that would be exclusive of Hawaii and Alaska?

A. Alaska and Hawaii would be from the sales group on the Pacific Coast because it is easier, and, as a matter of fact, we operate in Hawaii through an agent.

Q. Does your company for all of its domestic operations publish a report of its dollar volume of sales?

A. We publish an annual report every year.

Q. The last annual report, would that be for the calendar year 1959?

A. The calendar year 1959, yes.

Q. And approximately what was your dollar sale volume for that year?

A. \$552,000,000 approximately.

Q. That would include all of your products, is that correct?

A. That would include all of our products. Some of our [fol. 320] foreign sales are not included, or profits are not included in that consolidated statement.

The Court: Is that because of blocked currency?

The Witness: I beg your pardon?

The Court: Is that because of blocked currency?

The Witness: Matters of that nature, and also some of them operate through foreign corporations, like a Panamanian corporation, and we are not required to consolidate those earnings.

The Court: I see.

The Witness: It is a little complicated and I cannot explain it intelligently.

Q. You have stated that your largest gross sales are glass containers, is that correct?

A. Yes, sir.

Q. Are you able to judge in relation to the rest of the industry your position, that is, your company's position in the industry insofar as whether you are No. 1, 2, 3, 4 or 5?

The Court: You mean in terms of volume of sales?

Q. In terms of volume of business in the sale of glass containers.

[fol. 321] A. I am sure we are the largest producers of glass containers.

Q. Now, are you generally familiar with the various categories for glass containers?

A. Yes, generally, but I couldn't begin repeating them accurate. I might make an error as to the present classifications, but as the Department of Commerce classifies them, I think I know them.

Q. Now the Department of Commerce classifies glass containers as—in one case it has wide mouth and in another it has narrow neck, is that correct?

A. Yes, both wide mouth and narrow neck, but in a series of other classifications.

Q. Throughout the United States, in the 48 States, do you ship and sell both wide mouth and narrow neck containers?

A. Yes, sir.

Q. Now, in the Bureau's classifications they have a grouping, as I understand it, that is called wide mouth foods; would that be your understanding?

A. Yes, sir.

Q. Does your company sell wide mouth food containers?

A. Yes, sir.

[fol. 322] Q. Do you also sell narrow neck food containers?

A. Yes, sir.

Q. You sell beer containers?

A. Yes, sir.

Q. Both of the returnable and non-returnable type?

A. Yes, sir.

Q. Soft drink glass containers?

A. Yes, sir.

Q. Both of the returnable and non-returnable type?

A. Yes, sir.

Q. Do you sell containers listed in the grouping under toiletries and cosmetics?

A. Yes, sir.

Q. And also under the group of household and industrial?

A. Yes, sir.

Q. Medicine and health?

A. Yes.

Q. Liquor and wine?

A. Yes.

[fol. 323] Q. How about dairy products?

A. Yes.

Q. Milk bottles?

A. What?

Q. Milk bottles?

A. You said dairy products.

Q. They fall under dairy products.

A. Yes, milk falls under dairy products.

Q. You also sell the same classifications in narrow neck sizes for the groups that we have referred to?

Mr. McManus: I will withdraw that.

Q. So the Owens-Illinois Glass Company sells a full line or what is known as a full line of glass containers?

A. Well, there are some things that we do not make. We do not make any opal, for example. That is the opaque, like a cold cream jar. We don't make that line, and we don't make any blue glass.

Q. Does Owens-Illinois Glass Company have a subsidiary named Kimble Glass Company?

A. Yes, sir.

Q. Is that a wholly-owned subsidiary?

A. Yes, sir.

Q. Do they make opal ware?

[fol. 324] A. No, sir.

Q. Do you have—

A. I would like to qualify that; I am not sure.

Q. Do you know if they make blue glass?

A. No.

Q. What product does Kimble make, do you know?

A. Tubing and things from tubing for a great deal of the scientific glassware like what you give injections with in

syringes, and many of the others like beakers, test tubes, graduates, in the scientific line, and they also sell tubing to other manufacturers of scientific glassware.

Q. To your knowledge—

A. And television tubes.

Q. Your recollection is then that your company or any of your wholly-owned subsidiaries or divisions does not make opal glass, is that correct?

A. I said I couldn't answer you about opal.

Q. You don't recall that?

A. I don't recall whether we are making it or not. If we do it is in very small quantities.

Q. Now, for the glass container division do you engage in research and development work?

A. Yes, sir.

[fol. 325] Q. Do you have at the present time one or two plants or one or two locations in which you engage in this type of activity?

A. Well, we have a large research center in Toledo carrying on the technical—both the technical research in glass and other products, both from the applied research end of it and from the pure research end of it. We also carry on some research in the engineering departments of the various divisions, and sometimes at the plants. We have also in Toledo a packaging research division which I call a usage research, which involves customers' problems rather than research in the technical end of the other businesses; strictly usage research.

Q. Is my understanding correct that the packaging research would involve itself mostly with problems of customers?

A. Aiding the customers to use our—I will put it the other way—aiding the customer to use glass as a packaging material.

Q. Is that a service organization?

A. It can be both a service organization and an aid to the promotion of any business—it is functioning in a dual capacity.

[fol. 326] Q. Now, your technical research, as differentiated from your packaging research, could you tell me in a little more detail what that group does?

A. Well the technical research is working in all phases

of research, even to the blue sky use of silica or the products that we manufacture, or we manufacture paper. It is working on all of those things in connection with the products that we manufacture, the materials that we use, and also the applied research of the machinery and equipment, hoping to design new and better equipment, hoping to make the present equipment work better and more efficiently. But that, broadly, covers all of our business, not necessarily our glass container end of our business.

Q. I see. Would your technical research apply to the improvement of glassware, such as making it lighter or stronger, or things of that nature?

A. You say do they do—

Q. Would that be the type of research?

A. That is one assignment that they have.

Q. Has your company been carrying that type of research on for a number of years?

A. Yes, as long as I have been connected with the business.

[fol. 327] Q. Over the last 20 years have you been kept informed of the research work that has been done in the company in regard to the production of glassware?

A. I follow it generally, yes, sir.

Q. Over the last 20 years has the glass container generally been becoming heavier or lighter?

A. No, over the last 20 years—I would start back a little bit before that and say that over the last 30 years there have been significant changes in the weight of the container, and it has become considerably lighter.

Q. As the container has become lighter, has it become weaker or stronger?

A. For all practical purposes it has become stronger.

Q. So over the last 30 years you say that the glass container has become stronger and lighter, is that correct?

A. Yes.

Q. I believe you testified that you conduct technical research in regard to your machinery.

A. Yes.

Q. And that would be both machinery for producing glass [fol. 328] containers and also capping machinery.

A. Yes.

Q. And you make and sell certain capping machinery for your glass containers?

A. I think Mr. Babcock reported the other day that we make and lease.

Q. Excuse me, make and lease. And over the past 20 to 30 years have you been kept informed or have you kept yourself informed of the progress that has been made in the capping of glass containers?

A. Generally so, yes, sir.

Q. Do you know if the speed at which glass containers can be capped has increased or decreased?

A. It has increased.

Q. Has it increased considerably over the past 20 or 30 years?

A. Yes, sir.

Q. Without being specific, would it as much as double, could you say that?

A. Well, it would be different in different lines, sir. I would hesitate to answer that. I could be quite wrong in any answer that I gave you on that. The increases have been substantial.

Q. It would depend; you would have to know what particular line you were talking about?

A. You would have to ask me specifically has the baby food been increased, and then I would have to inquire as to whether it had been increased from 400 to 800 or 400 to 600. I couldn't answer you that without further inquiry.

Q. I understand. But you say it has substantially increased in most lines?

A. Yes, sir.

Q. You stated you also conducted study and research in the manufacture of the glass container itself, is that correct, in the actual making of the glass container you do research in that type of field?

A. Yes, sir.

Q. Have you done research also in the forming machine that forms the glass container?

A. We have done both research and development.

Q. Research and development. And have you kept yourself advised of this research and development over the past 20 or 30 years?

A. Generally.

Q. Has the speed at which you could manufacture a glass container over the past 20 or 30 years increased?

A. Yes, sir.

[fol. 330] Q. Are you able to make at the present time a more uniform and better glass container today that you could 20 or 30 years ago?

A. Yes, sir. That has enabled us to make them lighter and stronger because we have improved the distribution of glass. That has been one of the main accomplishments.

Q. And does your company have machinery which can be converted from making wide-mouth glass containers to narrow-neck glass containers?

A. Yes, sir.

Q. And is it readily convertible?

Mr. Hughes: Your Honor—

Mr. McManus: I will withdraw that question.

Q. Do you purchase all of your glass container forming machinery that you use?

A. No, sir.

Q. You manufacture some of your own?

A. Yes, sir.

Q. Now, with the improvements in the glass container industry and the capping industry that you have testified to has that allowed your company to move into new areas where glass containers were not formerly used?

[fol. 331] A. We have been able to move into areas where glass containers were not used in large quantities. I think it has been of assistance to us in expanding our markets, yes, sir.

Q. Directing your attention to processed foods, you make glass containers for processed foods?

A. Yes, sir.

Q. And do you make glass containers for fruits and vegetables, processed fruits and vegetables?

A. We make containers for the packing of fruits and vegetables, yes, sir.

Q. Now, does your research department make tests of which fruits and vegetables you can use your glass containers for?

A. I don't believe I quite follow you. I think I understand, but I don't understand it specifically enough to answer the question.

Q. Is your research department endeavoring to find out

new areas in the fruit and vegetable field that you can use your glass containers for?

A. Well, I would say that in connection with hunting for new markets your marketing people are those most likely to determine where a market was feasible or practical for us to try to interest the packer into packing his product into [fol. 332] glass containers. Our research really assists the packer in using our jars in his plant.

Q. I see.

A. Now, there is some overlapping in that. Which is the hen and which is the egg? Some time the research department comes up with an idea of what can be done before the marketing people have thought about it. It isn't a defined rule. We are glad to have a knowledge of that, whoever turns it up.

Q. Now directing ourselves to fruits and vegetables, over the past 10 or 15 years are there any fruits and vegetables that you have not used your glass containers for?

The Court: Are there any fruits and vegetables?

Mr. McManus: Yes. I am asking are there any.

The Court: Now, Mr. McManus, there are hundreds of thousands of fruits and vegetables in the world. How could anybody answer a question like that?

Mr. McManus: Well, let me go back.

The Court: Let's get down to something more specific. These vast generalities don't aid us very much.

[fol. 333] Mr. McManus: Let me go back, your Honor.

Q. Does your company manufacture certain stock sizes of glass containers which are comparable to metal can sizes?

A. We have some stock sizes that correspond to the same liquid capacity of cans that we sell to packers of fruits and vegetables, yes, sir. That isn't limited to that.

Q. I understand, but you do have some stock sizes.

A. Yes, sir.

The Court: In other words, for most standard can capacities there would be a glass container of approximately the same capacity, is that right?

The Witness: Well, we wouldn't have over the same line of cans, sir, but those which are used more regularly or in the larger quantities we have glass jars that are of the same same capacity as comparable to tin.

The Court: Yes.

Q. Now, these standard size jars that we are talking about, would they be used for, for example, beets?

A. Beets?

Q. Beets.

[fol. 334] A. Yes, sir.

Q. Would they be used for peaches?

A. Yes, sir.

Q. What changes would you have to make in the jar that you were using for beets to use that jar for peaches? I am just talking about the glass container.

Mr. Hughes: Your Honor, I object to it. I am not sure that I understand the question.

The Court: I will overrule the objection.

Do you understand the question?

The Witness: Yes, I think I do.

A. You mean that the same jar that I would manufacture to put beets in, somebody else could take that jar and put peaches in?

Q. Yes. Is that correct?

A. Yes, sir.

Q. I am just talking about the glass container only now. Would you have to make any changes in the glass container, in the lining or the coating or anything of that nature in that beet jar for it to be used for peaches?

A. No, it would be the same composition.

Q. It would, in fact, be the same jar, is that correct, when the purchaser would buy it?

[fol. 335] A. Well, it might not be the same jar if the customer did not like that type of jar, but we could sell him the same jar and he could pack both products in that same jar.

The Court: You could have a beet-packing process going on on one side of his plant and a peach-packing process going on on the other side, and a single feed of jars, one going to one side and one going to the other, if he wanted to; is that right?

The Witness: Well, that wouldn't be a practical way for handling the operation.

The Court: I grant you that. Assuming that that was practical.

The Witness: He could scoop peaches in one and beets in the other, yes, sir.

The Court: All right.

Q. And could you tell me why it is not necessary to make any change in that glass container, to change it from beets to peaches?

A. Well, the material in the glass container does not react any different to a peach than it does to a pear or a pea or a beet.

Q. Well, now, to your knowledge would that be true, that it does not react with any fruit or any vegetable, to your [fol. 336] knowledge?

A. I am not an expert, sir, but I have always assumed, and I think I am correct, that there are only a few very unusual materials that react to any degree on a glass surface.

Q. Is your company presently selling containers for baby food?

A. Yes, sir.

Q. Are you familiar with the type of container in which baby food was first packed?

A. Baby food what?

Q. Are you familiar with the type of container in which baby food was first packed? Was it glass, cans or what?

A. To my memory—and I can only state from what I think; I am not sure of this—but I think it was first packed in glass by the Clapp Baby Food Company. I think the first commercial packed baby food, I believe, came out in glass. I am under that impression.

Q. Would you know approximately when that took place?

A. No, sir, I wouldn't.

Q. Would it be in the middle 30's?

[fol. 337] A. Oh, no, glass packed baby food—I have a daughter 30 years old, and I was buying glass packed baby food for her when she was a baby. That's 30 years ago.

Q. From the time your first recall seeing baby food in glass, was it then, to your knowledge, packed in another type of container?

A. As I recall, most of the baby food, when it began to be

produced and sold in fairly large quantities, packaged baby food, I believe, was in tins.

Q. And today do you sell a number of baby food glass containers?

The Court: You mean do you sell glass containers for baby food.

Mr. McManus: Excuse me.

Q. Do you sell glass containers for baby food?

A. Yes, sir.

The Court: Is that a substantial item in your glass line, glass baby food containers?

The Witness: It is a substantial volume of business, yes, sir.

Q. Does your company sell glass containers for coffee?

A. Yes, sir.

[fol. 338] Q. Do you sell it for ground coffee or soluble coffee?

A. More soluble coffee considerably than ground coffee.

Q. Do you sell some glass containers for ground coffee?

A. Not in significant amounts, but some.

Q. But you do sell it for soluble coffee in significant amounts?

A. Yes, sir.

Q. To your knowledge do you recall when soluble coffee was first packaged in any type of container?

A. Well, I can—and this is purely a guess, sir—I remember, oh, considerably years ago that G. Washington coffee, that brand comes to my mind, was packed in a small vacuum-type tin can. I can't tell you when that was.

Q. But you recall that it was packed in a tin container?

A. Yes.

Q. To your knowledge is soluble coffee packaged in tin today?

A. I can't answer you that for sure, sir. I think it probably is, but you would have to ask somebody else that [fol. 339] question.

Q. Mr. Lewis, did you company ever manufacture and sell metal containers?

A. Yes, sir.

Q. And when was that? When did you first go into that business, approximately?

A. We started into that business in 1936.

Q. Could you tell me how you went about going into that business? Did you purchase equipment?

A. No.

The Court: What did you do to go into the business?

Q. What did you do to go into the business?

A. We acquired a small can company in Pittsburgh, Pennsylvania, known as the Enterprise Stamping Company. We acquired the can manufacturing division of the American Tobacco Company, which was called their Tin Deco Division in Baltimore. We bought a small can company in St. Louis, the details of which I don't recall.

The Court: All of those were going businesses?

The Witness: They were going businesses when we acquired them, yes, sir.

Q. Could you tell me what packers cans are generally considered to be? What are they used for, packers cans?

[fol. 340] The Court: Mr. McManus, we have got to worry about voices. You have got a tendency to drop your voice at the end of a sentence and I think both the witness and I missed it.

Mr. McManus: Would you read the question?

(Question read.)

Mr. Hughes: Your Honor, I object. Two questions there. It seems to me we should first have one.

The Court: Withdraw the question and reframe it.

Mr. McManus: I will withdraw it.

Q. When your company was in the can business were you directly associated with the operating of the can plants?

A. I was president of the can company, of Owens-Illinois Can Company for three or four years, yes, sir.

[fol. 341] Q. At that time did the term "packers cans" have a meaning, have a general meaning throughout the trade?

A. We used to use the word "sanitary" cans.

Q. And that refers to cans for what uses?

A. That is the ordinary can that I think of with beans, peas, corn.

Q. That would be for food products, is that correct?

A. Food products and they were used also for other products than food.

Q. Was there a term such as "general line cans" used at the time?

A. Yes, sir.

Q. And would that be normally for the non-food products?

A. I think some food products might have been packaged in cans like vegetable oils and edible oils of that kind, but I think of them as the non-food cans, the F-style cans with a little offset to it. They were used for things such as sprays, insecticides and some oil, but not limited. There were some food products and I am sure there were some syrups packed in it.

[fol. 342] The Court: You are now referring generally to the oblong type of can?

The Witness: The oblong style—he asked me, sir, about the general line, and we include the oblong can, as classified, as the general line. At least we used to do it. Then there were a number of medicinal, medical items packed in general line cans, and we classified the little aspirin tin as a general line can.

Q. Using those two broad classifications, did the Enterprise Can Company that you acquired make packers cans?

A. They made no packers cans. At the time we acquired them they were making mostly larger cans of the gallon size and up for paint and oil; five-gallon and two and a half, and five-gallon oil and grease drums. I don't remember whether we called those general line cans or not. That is quite a few years ago.

Q. You acquired a plant from the American Tobacco Company in Baltimore?

A. Yes, sir.

Q. Using those two broad classifications, what type of cans were they making?

A. They were making mostly general line cans and a [fol. 343] great many tobacco cans. Whether that was

classified as general line I don't know, sir. They also made housewares. They did not make packers cans.

Q. Now, would you tell me again—I have forgotten—when did you first go into the can business?

The Court: He said 1936.

A. 1936, early.

Q. After entering the can business did you build any additional plants or add any additional substantial equipment?

A. Yes, sir. We added a sanitary can line, a packers can line, in Baltimore; and we built a can plant in the Clearing District of Chicago where we manufactured packers cans and drums and larger containers of that type.

Q. Is your company presently in the can business?

A. No, sir.

Q. When did your company go out of the can business?

A. 1944—October, to be exact.

Q. For the years prior to 1944 had your can business been an unprofitable operation? Had it made profits?

A. Our can business had never made any profits. The first profit we made in the can business was in 1941.

Q. And from 1941 to 1944, when you sold your can business, [fol. 344] had you made a profit?

A. We were making some profit.

Q. And in 1944 what did you do with the can business?

A. We sold our can business.

Q. Who did you sell your can business to?

A. Continental Can Company.

Q. And do you recall if you approached them to sell your company or did they approach you?

Mr. Hughes: Your Honor, we have been going into this at considerable length. What is the relevance of this?

Mr. McManus: I want to show the organization and the size of this company. I have not asked him yet why they went into it and what the size was when Continental acquired it.

The Court: What does the question that you have just asked to do with the subject matter that you have just talked about?

Mr. McManus: Well, I think it is important to show—

The Court: If you want to go into that question, the size.

of the can business that they sold to Continental and the development of that can business, go ahead, but I do not [fol. 345] see what that has to do with the question that you are now propounding, or vice versa.

Q. Do you know what your position was in the industry at that time, No. 1, 2, 3, 4 or 5?

A. Only—

The Court: You mean in the can industry?

Q. In the can industry.

A. You mean in the can manufacturing industry?

Q. Yes.

A. I would have to guess at that. We were either third or fourth.

Q. Do you know who was first and second?

A. Well, I know that American and Continental Can were larger than we were. Whether National Can was larger—a little larger or a little smaller, I couldn't answer that. I can't tell you that.

Q. Now why did you decide or why did your company decide to go into the can business in 1936?

Mr. Hughes: I object to that as incompetent, irrelevant and immaterial.

The Court: I will sustain the objection. If you want to ask what factors did he take into account in reaching a decision as to whether or not to go into the can business, I [fol. 346] will permit that question.

Mr. Hughes: Your Honor, just so I do not interrupt each time, may I have a continuing objection to any of this line?

The Court: The whole line?

Mr. Hughes: Yes.

The Court: On this can company acquisition?

Mr. Hughes: Yes.

The Court: Well, just so we understand the objection, Mr. Hughes, what are your grounds?

Mr. Hughes: I do not see what relevancy it has as to what actuated this company in 1934 to any issue in this case.

The Court: All right, I will take it.

Q. What factor did you take into account in deciding to go into the can business?

A. Well, that takes more than a yes or no answer.

The Court: Oh, it certainly does.

A. I think we were quite conscious at the time that the consumer packaging demands for consumer packages or the development of the use of packaging of various products was probably on a rapid increase. Certainly, cans did, in our opinion, at that time play a part in the growth of that package demand. And, certainly, that was one very definite [fol. 347] reason.

I can think of two other reasons that we went into the can business: that for the first time the can companies had made inroads on what we considered our traditional business, beer.

Another shock that came to us was this: when tomato juice first came on the market it was in glass, and we woke up to the fact suddenly one day that it was all in tin.

I would say that those three factors were the major factors as to why we went into the can business.

Q. Now are you selling containers today, glass containers, for the packaging of tomato juice?

A. I think so, sir. I see glass containers on the market with tomato juice in them. Whether they are ours or not I couldn't tell you for sure.

The Court: You hope so.

The Witness: If I get close enough to look at the bottom I can tell.

Q. Now, Mr. Levis, you stated that your company is also producing plastic containers, is that correct?

A. Yes, sir.

Q. Do you know the type of basic material that your company uses in the plastic container that you make?

[fol. 348] A. Well, we make plastic containers out of several different materials. Would you please define what you mean by plastic containers a little more accurately and then I can answer it?

The Court: Mr. McManus, didn't Mr. Babcock give us a very thorough description of how Owens-Illinois makes plastic containers.

Mr. McManus: That is correct.

The Court: Why do we have to repeat that?

Mr. McManus: What I want to find out, your Honor, is this:

Q. I understand now that you make high density polyethylene containers, is that correct?

A. Yes, sir.

Q. And for approximately how long a period of time have you been making those containers?

A. I think Mr. Babcock reported in 1958. I could not answer that as to the day or week or month or year.

Q. Now, what factors did you take into account when you decided to go into the manufacture of high density polyethylene containers?

Mr. Hughes: The same objection as to relevancy and [fol. 349] competency and materiality.

The Court: Relevancy is one and materiality is another. What is this about competency? There was no previous objection about competence, as I recall.

Mr. Hughes: I withdraw the objection as to competence.

The Court: Very good.

A. I would like to have you ask me your question again. I am at a loss—

Mr. McManus: Could you read that question back?

Mr. Hughes: I take it the objection is overruled?

The Court: Yes, the objection is overruled.

(Question read.)

A. We believed that there was going to be a number of or a substantial quantity of containers of that kind sold and there was an opportunity to sell, I hope, at a profit, containers in the field that we believed that those were going to be used in increasing quantities, and we thought we ought to go into the business.

Q. Were there any other factors?

[fol. 350] A. Well, possibly we had some defensive feeling in mind, that perhaps they might make inroads on some glass fields.

The Court: What, for example?

The Witness: Well, they might make—they might enter the bleach field. They haven't up to date to any degree. In

the case of where we sell our largest volume, and I believe Mr. Babcock testified, that was in the light detergent field, which was not in glass, had been in glass once, was not in glass to any great extent at present, and that was an opportunity to take a substantial amount of container business which did not take it out of glass, it took it out of tin.

The Court: In other words, Mr. Levis, I gather that you had two things in mind or two factors that you took into account: one, to prevent inroads on your glass or to protect the market in glass against possible substitution of plastics, and the other was to expand into other fields, is that right?

The Witness: I think, sir, I would like to qualify that. We did not go into it to keep our glass market because we didn't think by going into it that we would keep the bleaches, [fol. 351] for example, from going into plastics.

The Court: You want to keep your market—

The Witness: We wanted to retain the volume of business in that field. That was only one reason. The other reason was that we believed we could further expand our sales in this field.

The Court: Has that been a profitable operation to date?

The Witness: There has been so much development work on it, r, developing machinery and equipment, that it would be—it wouldn't be profitable to us to date. We hope that it will be and look forward to it being profitable, but if we charge back the development work against it—

The Court: It wouldn't be profitable in the profit and loss statement?

The Witness: No, sir.

By Mr. McManis:

Q. And, Mr. Levis, that would be as of the present time, isn't that right? It would not be profitable as of the present moment?

A. If you are asking me if it is currently profitable as of this month from a bookkeeping standpoint, I would say yes. We are a long way from absorbing the amount of investment [fol. 352] in the development work that we put into the development of the machines and the processing.

Q. Do you happen to know or do you know or could you

tell me how many plastic container plants you have that manufacture high density polyethylene containers?

A. That we have? I thought Mr. Babcock reported on that. He is more qualified to do that than I am. I could tell you approximately.

The Court: I think Mr. Babcock covered that.
Mr. McManus: All right.

Q. Directing your attention to the glass containers that you make for food products, in arriving at the price at which you sell your glass containers for food products, is the price of other types of containers a factor in the price that you arrive at for your glass containers?

A. The price of other types of containers?

Q. Yes.

A. Yes, they are taken into account.

Q. You take into account the raw material used by other types of containers, that is, the price of raw materials for other types of containers?

[fol. 353] A. That is a factor.

Q. What type of raw materials used in other containers do you keep yourself advised on?

A. Well, we keep ourselves advised as to all packaging material prices. Any material that is used in the packaging field, we are quite conscious of the cost of that material. Many of them we buy ourselves. We buy tinplate.

Q. In the food field you would take into consideration the price of tinplate in arriving at the price?

A. We would take that into account.

Q. Would you take into account the price of metal cans in arriving at the price of plastic containers in the food field?

Mr. Hughes: Your Honor, it seems to me that he is using the word "food"—

Mr. McManus: In glass containers—I will withdraw the question.

The Court: Yes, I think you better withdraw it and re-frame it.

Q. In arriving at the price that you sell your glass containers for in the packaging process field, in arriving at

that price, do you take into consideration the price of metal [fol. 354] containers? Is that a factor?

A. Yes, sir.

The Court: What other factors do you take into account besides the can prices, the raw materials for other containers and the prices of other types of containers generally?

The Witness: Our own costs, sir.

The Court: You take into account your own costs of manufacturing and sales. What else do you take into account? Do you take into account the factors concerning reactions of your customers, and how do you act on those?

The Witness: Well, I will answer you by saying, sir, that our costs and the raw material costs are only factors but they are not a final determining factor. Perhaps we can get a premium for our containers. We take into account, will the customer pay a cent more because he sees features in the jar or will he not. Sometimes we find that he will and other times we find that he will not. Those are other factors in determining the price.

The Court: That is what I was getting at. You can multiply that type of factor, I presume, quite a bit in dealing with your customer relations and what prices you consider [fol. 355] to be fair prices to give you a fair profit?

The Witness: Now, I don't know what you mean by multiplying—

The Court: Let me put it this way. You gave one example of the ultimate customer being able to see features to glass that he could not see to a can, which is a factor that might influence the packer in buying a glass.

The Witness: That is right.

The Court: And there were other factors of that nature that you take into account when you consider individual customers and their individual needs, is that right?

The Witness: Yes, sir.

The Court: All right.

Mr. McManus: Your Honor, at this point could we take about a ten-minute mid-morning recess?

The Court: We will take a short mid-morning recess.

Mr. McManus: I did not mean to set the time.

The Court: All right.

(Short recess.)

[fol. 356] The Court: All right, Mr. McManus.

By Mr. McManus:

Q. Mr. Levis, could I go back to your answer in regard to the number of glass container plants that your company has in which you gave their location. Could you tell me if you overlooked any of your plants?

A. Yes, sir, I overlooked three plants in West Virginia; Charleston, Fairmont and Huntington.

Q. Thank you, sir.

A. When you originally asked me the question I had forgotten. That was glass container plants only that you asked me about.

Q. That's correct, sir.

Now, you have testified that one of the factors that you took into account in the pricing of your glass container was the price of metal cans. Do you take into account the price of metal cans in pricing your glass containers for the beer industry?

A. Yes, sir.

Q. For the soft drink industry?

A. Yes, sir.

Q. For the toiletries and cosmetics industry?

A. Not to the same degree.

Q. Household and industrial?

[fol. 357] A. Probably more so than pharmaceuticals.

Q. Mr. Levis, are you familiar with the National Canners Association?

A. Generally, yes, sir.

Q. You know that there is such an association?

A. Yes, sir.

Q. Do you know if they have conventions yearly?

A. Yes, sir. I have attended them.

Q. You have? Do members of your glass container division attend those conventions?

A. We have representatives from the glass container division of our business at those conventions, yes, sir.

Q. And what is the purpose of their attending those conventions?

Mr. Hughes: Well, your Honor, it seems to me that that is irrelevant and immaterial.

The Court: Overruled.

Q. Would you answer, please?

A. Well, a great number of our customers attend those conventions.

Q. Would these customers that you are talking about be members of the Association?

Mr. Hughes: Well, your Honor, I don't know, how can Mr. [fol. 358] Levis possibly say whether they are or not?

The Court: This is so obvious; plainly a number of customers of Owens-Illinois and Continental Can and American Can are all members of the National Cannery Association.

Q. Is that correct, Mr. Levis?

The Court: There is no doubt about that, is there?

Mr. Hughes: No, your Honor, but—well never mind.

A. I would presume they were members.

The Court: I presume a lot of non-members come to conventions, too, don't they, Mr. Levis?

The Witness: I would presume so, sir. I wouldn't know for sure.

Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Mr. Hughes: Your Honor, before I proceed with the cross-examination I would like to move to strike from the record the testimony concerning the can operations and the sale of the can company to the Continental Can Company, and I would ask your Honor to reserve decision on that until such time as we go into this whole question of prior acquisitions [fol. 359] which your Honor has indicated you will explore.

The Court: You made your motion to strike. I will reserve decision on the motion to strike pending arguments on it.

Cross-examination.

By Mr. Hughes:

Q. Mr. Levis, during the time that you owned that can company—what was the name of it, the can company that you had? What was the name of the can company?

A. The can company as we owned it?

Q. Yes.

A. Owens-Illinois Can Company.

Q. During the time that you owned it did that company ever make a beer can?

A. No, sir.

Q. Do I understand that you lost money on the operations of that can company overall?

A. Yes, sir.

Q. And during the war you made some money in its operations, is that right?

A. During the years we were in war production work we made some money out of the business, yes, sir.

Q. And during that time you were mainly making products other than metal cans, is that correct, in the war years?

A. No, sir. During the war years—I can't answer you that in percentage of the business, but during the war years the general line of the can business was the one that was most limited in the tin-plate they could get. The business that we had in the packaged can business is probably—was not interfered with very much.

Q. In any event, it was during that period that you operated in the black, is that correct?

A. We operated one year in the black before the war. The last year that we were permitted a full supply of tinplate we operated in the black.

Q. And you sold the company in what year?

A. 1944.

Q. To Continental Can Company?

A. Yes, sir.

Q. With the blessing of the Department of Justice?

A. That I can't answer you, sir. I don't recall.

The Court: You don't recall the blessing?

The Witness: No.

[fol. 361] A. You would know that better than I do.

Q. Well, I think that is right, we would.

Mr. McManus: Well, your Honor, I object to Mr. Hughes testifying.

The Court: The point is he doesn't remember anyway.

Mr. McManus: That's right, and neither does Mr. Hughes.

Q. Now, Mr. Levis, would you say that competition among the companies engaged in the manufacture of glass containers was keen and vigorous?

A. Yes, sir.

Q. You make beer bottles, do you not?

A. Yes, sir.

Q. Would you say that you were the largest producer of beer bottles?

A. I would say we were one of the largest producers of beer bottles. Whether we are the largest or not I can't answer that definitely.

Q. You do not, however, make the crowns for those beer bottles, do you?

A. We do not.

Q. You have never made crowns for beer bottles, have you?

[fol. 362] A. We have not.

Q. Do you make soft drink bottles?

A. Yes, sir.

Q. Do you make any crowns for those soft drink bottles?

A. We make no crowns at all.

Q. And never have?

A. And never have.

Q. You make plastic containers and you make glass containers, is that correct?

A. Yes, sir.

Q. And you do not make any metal containers; you don't make any cans?

A. No, sir.

Q. Mr. Levis, would you say that Owens-Illinois Glass Company, by reason of the fact that it manufactures and sells both glass containers and closures for glass containers has a decisive advantage over other manufacturers of glass containers who do not have a closure line?

Mr. McManus: Your Honor, I would like to object to that in that I think that is the conclusion that the Court has to come to, and it is a legal conclusion, whether there is a decisive advantage.

[fol. 363] The Court: Yes, I will sustain the objection to the form of the question, not the subject matter of the question, the general subject matter.

Mr. Hughes: Your Honor, just so that I can round out the record on this:

Q. Would you say that Owens-Illinois Glass Company, by reason of the fact that it manufactures both glass containers and closures has a decisive advantage over other manufacturers of closures who do not have a glass container line?

Mr. McManus: Your Honor, I object to that, the same objection.

The Court: Sustained.

Q. Do most of your customers for glass containers have more than one source of supply?

A. For glass containers?

Q. Yes.

A. Yes.

Q. Do most of your customers for closures for glass containers have more than one source of supply?

A. Yes.

Q. Do most of your customers for plastic containers have more than one source of supply?

A. I would think so, but I am not as familiar with our [fol. 364] plastic container customers' requirements as I am glass and closures.

Q. Do most of your customers for closures for plastic containers have more than one source of supply?

A. For closures for plastic containers?

Q. Yes.

A. I will have to answer you the same as I did. I am not as familiar with the requirements of our plastic container customers as I am glass and closures.

Q. Mr. Levis, does your company sell at less than your published list prices to meet a specific price quotation to a specific customer by a can manufacturer?

Mr. Hughes: Would you like that question again?

The Witness: Yes, I am lost.

Mr. Hughes: I am thinking of the Robinson-Patman Act sense. I am using this in the Robinson-Patman Act sense.

Would you read the question now?

(Question read.)

A. For cans?

Q. Not for cans. Do you sell off your list price for glass to a specific customer to meet a quotation by a can manufacturer to that customer?

A. In other words—

Q. In the Robinson-Patman Act sense.

The Court: Now, don't get it further complicated.

Mr. Hughes: I withdraw that.

A. You have got it pretty complicated, Mr. Hughes. I don't know how to answer that.

Q. Well, you have—

A. If a glass company cuts a price to a customer do we meet it?

Q. Well, I would like to put that question to you and have you answer as to that.

If a glass company cuts a price to a customer do you meet it?

A. Well, that is not my—it does not come under my direct jurisdiction; sir. I mean, the pricing of our product and the quotation of prices is the responsibility of the glass container division. That is not mine, other than generally so.

Q. And would your answer be the same with reference to cutting your prices to meet a quotation of a can company to a customer?

A. You mean their quoting on cans and we then meeting [fol. 366] it with glass?

Q. Yes.

A. I would have to say that I have no direct responsibility for that, sir, and I really could not answer that question.

Q. Mr. Lewis, can you use the same bottle for vinegar as you use for liquid starch?

A. I would see no reason why we couldn't.

Q. Can you use the same bottle for peanut butter, or the same for peanut butter that you use for silver polish?

A. The same jars?

Q. Yes, same kind of jars?

A. Yes, there is no reason why we couldn't that I can see.

Q. Now you have made reference to your closing equipment, and I take it that you are referring to the equipment which is used to put the closure on the glass container, is that correct?

A. Yes, sir.

Q. And do you manufacture that equipment yourself?

Q. And then you lease it to the packers or other persons [fol. 367] who pack products in glass containers?

A. Yes, sir.

Q. And would you describe to his Honor the efficiency of that equipment in the actual packaging operation? Would you say it is good, efficient equipment?

A. You are a little out of my field, Mr. Hughes. I am not a closure expert, nor am I a packaging engineer. I think the equipment is very efficient—my people tell me it is. That is as far as I know. I have seen it operate and it looks efficient.

Q. And it is usable and satisfactory on the glass containers which you manufacture?

A. I assume that it is satisfactory for glass containers that we manufacture and also glass containers that others manufacture.

Q. In your direct examination you alluded to the fact that glass containers correspond to the size of can containers in certain sizes. Do you recall that testimony?

A. Certain sizes, I said the liquid capacity, as I understand it. We have a two and half jar, for example, which I understand is equivalent in liquid capacity to the designation of a two and a half tin.

[fol. 368] Q. Is there more variation from comparable sizes between cans and glass containers in the larger sizes?

A. I don't understand this, Mr. Hughes.

Q. Well, in the larger sizes, are the cans made to hold the same content of product or is the range of variation there greater than in the smaller sizes?

A. I don't know whether we have a complete line that corresponds to a complete line of cans or not.

Q. You just are unable to say?

A. I am unable to say that.

Q. Do you happen to know whether the George Washing-

ton coffee to which you referred was the same type of instant coffee that is presently on the market?

A. Same type of coffee?

Q. Yes:

A. I don't know. It was a powder that you put into a cup and stirred up with hot water. That is as far as I know about it.

Q. Do you know whether it was an entirely different formulation?

A. I haven't the faintest idea, sir.

[fol. 369] Q. Mr. Levis, do you sell glass containers without closures?

A. Do we sell glass containers without closures?

Q. Yes.

A. Well, to my knowledge we don't sell any glass containers with closures with the exception of our prescription ware line which we sell already capped.

Q. And do you sell closures without glass containers?

A. Yes, sir.

Q. Mr. Levis, I will just show you three annual reports for the years 1953, 1954 and 1959, and ask you to look at them and tell me whether you can identify them as copies of your annual reports for those years.

A. Yes, I am sure they are.

Mr. Hughes: I offer them in evidence.

The Court: Any objection?

Mr. McManus: The only objection I have—I guess I don't have an objection to obviously what they are, but I thought that before any offer was to be made of any document in this court it was to be given to the other side prior thereto and given a chance to examine it, and I am sure these are the reports, but I haven't had any chance to examine them.

[fol. 370] Mr. Hughes: Well, your Honor, if Mr. McManus feels he wants some opportunity—

The Court: You will have a chance to look at them. We will reserve on the offer, that is all.

Mr. Hughes: Could I have them marked for identification?

The Court: We will mark them for identification now.

(Marked Defendants' Exhibits B-1, 2 and 3 for identification.)

Mr. Hughes: I have no further questions.

The Court: Anything further?

Mr. McManus: Just a few.

Redirect examination.

By Mr. McManus:

Q. Now, you testified, Mr. Levis, on cross-examination that competition among the glass container companies was keen and vigorous, is that correct? You so testified?

A. Yes, sir.

Q. Would that be in all of the various lines of glass containers that you manufacture?

A. You mean between companies manufacturing glass containers?

[fol. 371] Q. Yes.

A. Yes, I would say that all the lines were vigorously competed for.

Q. When you say that are you referring to all of the companies in the glass container industry? Competition is vigorous among them all?

A. Yes.

Q. Prior to 1956 would you have included Hazel-Atlas Glass Company in that group?

A. They were competing vigorously for business.

The Court: Is the entity that was formerly Hazel-Atlas Glass still competing?

The Witness: Yes, sir, they are very competitive.

Q. You testified that the glass container that was used for silver polish could also be used for peanut butter, is that correct?

A. Yes, I am sure that you could do that. Now, you could have a liquid silver polish in a narrow-necked bottle and you would hardly put peanut butter in a narrow-necked bottle. You couldn't get it out.

The Court: You are thinking of the paste, aren't you?

[fol. 372] The Witness: Yes. If you put paste in one jar, you could certainly put peanut butter in the same jar.

Mr. McManus: That is all I have, your Honor.

The Court: You may step down, then, Mr. Levis. Thank you.

(Witness excused.)

Mr. Greenberg: Your Honor, the Government's next witness is Mr. William T. Egan.

WILLIAM T. EGAN, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Mr. Egan, where do you reside?

A. In Scotch Plains, New Jersey.

Q. And by whom are you employed?

A. Colgate Palmolive Company.

Q. What has been the period of your employment with this company?

A. Over 40 years.

Q. Will you describe the principal positions you have held with this company?

A. I was assistant director in research and development, [fol. 373] director of packaging for the domestic company, and now manager of packaging for the household products division.

Q. Would you describe for us, sir, your work, duties and responsibilities in each of these various positions?

A. Well, as assistant research director I was responsible for the packaging laboratory where all of our research work was done on packaging, quality control, patent liaison work, and standards and analytical work for the research and development department.

Q. In your present position what are your duties and responsibilities?

A. I am responsible for all of the packaging of the household products division.

Q. Sir, you have been connected with the technical aspects of packaging throughout your experience, have you not?

A. That's right.

Q. Would you describe for us, sir, your educational background?

A. I have a BS in chemical engineering from Cooper Union.

[fol. 374] Q. Does your company market household liquid detergents?

A. Yes, sir.

Q. Do you know how long Colgate has been marketing this product?

A. Within the last five years.

Q. What types of household liquid detergents does Colgate manufacture and sell?

A. There are three types; the light duty that is used for dishes and light fabric; the heavy duty for washing machines; and the all-purpose type for kitchens and bathrooms and so forth.

Q. Do you know, sir, what types of containers your company has used in marketing each of these liquid detergents?

A. Yes.

Q. Would you tell us, sir, what types of containers, through your experience, have been used for each of these products by your company?

A. For the light duty detergents we started out with metal.

Q. Would you raise your voice, sir?

A. For the light duty detergents we used metal cans and now plastic. For the heavy duty detergents we are in cans [fol. 375] and are going towards plastic. On the all-purpose detergents, on the 16 and 32-ounce, we had bottles, and for the 64-ounce, half-gallon, we had cans or have cans.

Q. Sir, would you describe each of these containers for us, what types of containers are they?

A. Well, for light duty we have a three-piece manufactured can with an internal plastic coating and a plastic neck and a plastic cap. Our new container for light duty will be a linear polyethylene container under our special design.

With regard to heavy duty we have had a three-piece metal can with a plastic neck and plastic cap with an internal coating, and in the heavy duty we have had a conventional grip type glass bottle with a plastic cap and a sort of

a rectantgular can for the half-gallon size with a plastic neck and a metal cap.

Q. Thank you, sir. What types of containers, through your experience, have been experimented with by your company for each of these detergents?

A. Well, we always experiment with the conventional glass containers, the metal containers and plastic containers.

[fol. 376] Q. And they are the types that you just described, sir?

A. Yes.

Q. Sir, would you describe for us the types of experiments you conducted with each of these containers?

A. In our experimental work we have to determine whether the container will hold the product, whether we will get contamination which might cause discoloration of the product due to rusting or might affect the odor, and therefore these are aged under accelerated conditions as well as normal conditions and examined from time to time.

Q. During this experimentation program has your company cooperated with any of the container suppliers who supply the types of containers you described?

A. Yes, sir, we rely on the research departments of our suppliers a great deal and share with them our experiments by sending them exactly the same material that we are testing so they can put it up on test.

Q. You do that with the can, glass container and plastic container suppliers?

A. Yes, that's right.

[fol. 377] Q. Would the same be true for your experiments with other products where they involve cans, glass and plastic containers?

A. Yes, sir.

Q. You cooperate with your suppliers?

A. Yes, sir.

Q. And would you say, sir, for the rest of your products that in your company's research laboratories you carry on generally the same type of experiments with various containers that you might use?

A. Yes.

Q. Sir, do you know what types of containers your competitors have used for each of these various liquid detergents?

A. Yes, sir.

Q. Now, how have you gained such knowledge?

A. By visiting the local stores throughout the metropolitan area and sometimes when we are away on trips we also visit the stores.

Q. You do this while you are working for Colgate?

A. Yes, sir.

Q. And it is for a business purpose?

A. Yes, sir.

Q. Sir, would you tell us what types of containers your competitors have used for each of these various liquid detergents?

[fol. 378] A. Well, on light duty detergents, for example, the leading one came out in cans. Another one was out in glass bottles, and then changed to cans, and now are in plastic containers. The heavy duty have been in cans and the all-purpose have been in glass bottles, with some half-gallon cans.

Q. Sir, changing the direction of my questions for a moment and directing your attention to liquid shampoos, does your company market liquid shampoos?

A. Yes, sir.

Q. And how long has it been doing so?

A. Well, Halo shampoo has been out since around 1935, '36, the latter part of the 30's.

Q. Sir, what types of containers has your company used in marketing these liquid shampoos?

A. Halo has been principally in glass. We have sales-tested a polyethylene container.

Q. Is this linear high density or the low density?

A. At that time it was the high pressure, low density.

Q. Low density. When you say at that time, sir, can you give us an estimate of what time you are talking about?

A. I think it was around 1936 or '37.

Q. That is your best estimate?

[fol. 379] A. Yes.

Q. Sir, what types of containers, through your experience, have been experimented with by your company for these shampoos?

A. Well, we have been experimenting with glass as one of the containers, metals and plastics, all types of plastic material that have become available to us.

Q. Now you say "metal," sir. Do you mean a can?

A. Yes.

Q. Do you know what types of containers your competitors have used for these various liquid shampoos?

A. Yes.

Q. And you found out about that in the same way that you testified to before?

A. Yes.

Q. Now would you describe each of these containers for us, containers that your competitors have used?

The Court: Wait a minute, now, you don't really mean that. Do you want him to describe each container his competitors have used?

Mr. Greenberg: I don't mean that literally, your Honor. [fol. 380] The Court: You want him to give us some general description of the types of containers that competitors are using, is that what you want?

Mr. Greenberg: Yes, that was the intent of the question.

The Court: All right, let's have it.

A. Our competitors have used glass and plastic, to my knowledge.

Q. Now, could you describe the type of glass containers and the type of plastic containers you referred to?

A. Well, each company has their own type of shaped glass container.

Q. Well, this is a conventional glass container and the plastic container that you are familiar with, right, and that you discussed before?

A. Yes.

[fol. 381] Q. Sir, changing the direction of the questions again, at this time to liquid cream shampoos—

A. Yes.

Q. Your company markets that product, is that right, sir?

A. Yes.

Q. How long has it been doing so?

A. Within the last ten years I believe we have been putting out cream shampoos in a liquid form.

Q. What types of containers has your company used in marketing these liquid shampoos?

A. Glass containers.

Q. Glass containers?

A. Yes.

Q. What types of containers through your experience have been experimented with by your company for these liquid shampoos?

A. Again we would put it up in glass cans and plastic.

Q. What type of plastic containers?

A. The regular polyethylene.

Q. Has your company experimented with high density polyethylene?

A. Yes, sir.

Q. What have been the results of those experiments?

[fol. 382] A. High density has only come out in the last few years and I have not been in charge of the work and research on that end in the last few years.

Q. Sir, do you know what types of containers your competitors have used for these various liquid shampoos?

A. Glass and plastic.

Q. When you say plastic, what type do you mean?

A. Polyethylene—that would be the regular polyethylene.

Q. Sir, changing the direction of the questions again, and this time to hairdressings, your company markets that product, is that right?

A. Yes.

Q. How long has it been doing so?

A. Well, within the last ten years. We have lustre cream hairdressing, and we have put that out in glass, and we have put out various brilliantines in a glass container.

Q. Sir, what types of containers through your experience have been experimented with by your company in these products?

A. Mostly glass and plastics in this particular case.

[fol. 383] Q. Do you know what types of containers your competitors have used for these liquid hairdressings?

The Court: Let us try a shortcut with this witness. When you give these substances let Mr. Egan give all the information about each one of them that he gave previously so that you won't have to repeat the questions.

Mr. Greenberg: All right, sir.

Q. We are now on liquid hairdressings, to refresh your recollection, and we are up to the question about what your competitors have been doing.

The Court: What do your competitors use?

The Witness: Glass and plastic.

Q. Directing your attention now to liquid insecticides?

A. Liquid insecticides, we are using metal cans with a pump and glass bottles with a pump.

Q. When you say a pump, what do you mean by that?

A. A plunger-type pump that is used on the various types of products that you have just mentioned.

Q. In other words, the pump pumps the glass contents resulting in a spray?

A. Yes.

[fol. 384] Q. And does this container have the same end use as the aerosol can?

A. To a certain degree, yes, sir.

Q. They both emit spray?

A. Yes, sir.

Q. They have both been designed for that end use?

A. Yes.

Q. And that is so for your company?

A. Yes.

Q. Would you continue now? What types of containers through your experience have been experimented with by your company for liquid insecticides?

A. Glass and metal, and we have experimented with plastic also.

Q. And what do your competitors use?

A. As far as I know, glass and metal.

Q. Sir, referring now to liquid deodorants, does your company put that out?

A. We put out a product called Veto in a regular polyethylene feed spray container.

Q. How long have you been doing so?

A. Within the last five years.

Q. And what types of containers has your company used?

[fol. 385] A. Just the polyethylene squeeze bottle.

Q. And what type of containers have you experimented with?

A. Glass and plastic in those particular cases.

Q. And what have your competitors been doing?

A. Mostly plastic, as far as I know.

Q. Now when you say glass in this particular area, will you describe the container?

A. Well, you can have a conventional glass bottle with a spray pump on it to give the atomization. This is a squeeze bottle with a plug and a tube in it for atomization.

Q. Referring now to paste cream deodorants, how long has your company been marketing that?

A. Over five years.

Q. In what type of containers?

A. For our shampoos we use opal jars and collapsible metal tubes.

Q. What types of containers have you experimented with?

A. Plastic collapsible tubes and plastic jars.

The Court: The collapsible tubes that you are presently using, are they metal or plastic?

The Witness: Metal.

[fol. 386] Q. What are your competitors using for that?

A. The same type of packaging.

Q. Directing your attention now to paste cream shampoos, your company markets that, is that right?

A. That is what I was referring to, Mr. Greenberg.

Q. You were referring to both?

A. Yes.

Q. Paste cream deodorants and paste cream shampoos, and you were describing the experiments you have made?

A. I am sorry, were you talking about—

Q. I was on deodorants.

The Court: No, you were on paste creams last.

The Witness: I thought you said cream shampoos.

Q. Well, I thought I said cream deodorants. We are now talking about cream deodorants.

A. Cream deodorants have been in opal glass jars.

Q. And what containers have you experimented with?

A. Plastic—just plastic besides the opal glass.

[fol. 387] Q. When you say plastic, what do you mean by that?

A. Polyethylene double-wall jars.

Q. Mr. Egan, I would like to go back to the shampoos. First, the cream shampoos, what type of containers do you use?

A. An opal jar for our Lustre-Creme shampoo, and we have tested double-wall polyethylene jars.

Q. And what are your competitors using?

A. Similar opal jars. I am not sure whether they have experimented with plastic jars.

Mr. Greenberg: You may cross-examine, Mr. Hughes.

The Court: Mr. Hughes, rather than commencing your cross-examination and going on after lunch, unless you do not have much to ask this witness and you can be finished with him before lunch—

Mr. Hughes: I would like to take a recess now, your Honor.

The Court: All right, we will take a recess now and we will return here at five minutes after two.

Mr. Hughes: This witness was called out of order and we have made no objection to that but I did not even have the file here.

[fol. 388] The Court: All right.

(Recess to 2.05 p.m.)

AFTERNOON SESSION

The Court: Mr. Egan will resume the stand. I understood you wanted to ask a few additional questions, Mr. Greenberg.

Mr. Greenberg: Just four short questions, your Honor.

The Court: Very good.

Mr. Greenberg: Thank you.

WILLIAM T. EGAN, resumed.

Direct examination.

By Mr. Greenberg:

Q. Mr. Egan, would you tell us the names of the aerosol can manufacturers you have worked with in your joint research activities?

A. With the drawn can we worked with Crown Can Company, who are the only manufacturers of the drawn can.

The Court: What is a drawn can?

The Witness: It is a piece of metal that they press a die

through and then the metal draws down so there is no seam on the side of the can.

[fol. 389] The Court: I see.

A. (Continuing) With the three-piece conventional manufactured can we have worked with Crown, Continental and American Can Company.

Q. Sir, are these two type of cans interchangeable?

Mr. Hughes: I object to that.

Q. Do they serve the same end use, sir?

A. They do serve the same end use, yes, sir.

Q. Would you tell us the names of the conventional can manufacturers you have worked with in your joint research activities?

A. On aerosols?

Q. No, the conventional cans.

A. Oh, conventional. Crown, American, and Continental Can Company.

Q. Sir, would you tell us the names of the plastic bottle and jar manufacturers you have worked with in your joint research programs?

A. On plastic containers we work with Plax, Owens-Illinois, Imco and Continental Can.

Q. Sir, would you tell us the names of the conventional glass container manufacturers you have worked with in your joint research activities?

[fol. 390] A. Well, Owens-Illinois. There is some company over in Jersey. I can't think of their name. And as far as jars are concerned, we worked with Hazel-Atlas and I can't think of the other names of suppliers of jars. Probably Wheaton on glass containers, too.

Mr. Greenberg: You may cross-examine, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Egan, with what division of the company are you now connected?

A. The Household Products Division.

Q. And how long have you been with that division?

A. Since May, 1957.

Q. And it was prior to that that you were with the Toiletry and Cosmetics Division, is that right?

A. That's right.

Q. Is it fair to say that since the time of your transfer from one division to the other that substantially all your time and attention have been devoted to your duties in the Household Division?

A. Yes, sir.

Q. And would it be in that division of your company that [fol. 391] you have more closely followed the various developments that you have testified to on your direct examination?

A. Yes, sir.

Q. Now in your direct examination you referred to the fact that your competitors have used certain types of containers for their competitive products. Do you recall that?

A. Yes, sir.

Q. When you were asked about certain household and chemical items and certain cosmetic items, you were not attempting to testify, were you, to any of the quantities which any of your competitors used of any particular type of container?

A. No, sir.

Q. And you would not undertake to testify to any of their quantities of any particular container for any particular purpose, would you?

A. No, sir.

Q. In the detergent field there are so-called dry detergents as well as liquid detergents?

A. Yes, sir, there are powdered detergents.

Q. Is liquid detergents a relatively newcomer in the field?

A. Within the last ten years, yes, sir.

[fol. 392] Q. And prior to that it was all powdered?

A. Yes, sir.

Q. And even prior to that I guess it was all soap?

A. All soap.

Q. So first it was all soap, then the dry detergents and then the liquid detergents?

A. Yes, sir.

Q. And at the present time you have both the dry detergents and the liquid detergents?

A. That is correct.

Q. And would you say that the overwhelming volume of all detergents was in the dry detergent field?

Mr. Greenberg: I am going to object to that question, your Honor, on the ground that it is ambiguous. Are we talking about his company, and if we are, a foundation should be laid.

The Court: Sustained. Reframe the question.

Q. Do you have a generalized knowledge of the approximate quantities of dry detergents that are used in the industry as distinguished from the liquid detergents?

A. Well, I see reports and I have that knowledge.

[fol. 393] Q: To the extent of the knowledge that you have is there a greater volume of dry detergents than there is of liquid detergents marketed in the industry?

Mr. Greenberg: Objection, your Honor, until we know which reports the witness is referring to, where he gets them, and, in other words, a foundation for it.

The Court: Yes, I do not think there is any foundation for it.

Q. Coming down to your own company, does your own company make dry detergents as well as liquid detergents?

A. Yes, sir.

Q. In your own company would you say that the greater volume would be the dry detergents?

Mr. Greenberg: I object to the question, your Honor.

The Court: No, he is familiar with his own company. Overruled. I am not going to assume that an ordinary man in a responsible position of a business is not familiar with the activities of his own company. We are just wasting time on that.

Q. Would you like the question reread?

[fol. 394] A. Yes.

(Question read.)

A. Yes, sir.

Q. And would you say that it was substantially greater than the liquid detergents?

A. Yes, sir.

Mr. Greenberg: I object, your Honor.

The Court: Overruled.

Mr. Greenberg: May I have the same objection to this line of questions?

The Court: No, you are not going to have a continuing objection to questions of that nature. If you have an objection, state it everytime.

Q. Coming down to the liquid detergents, there are three types, are there not, the light duty, the heavy duty and the all-purpose detergent, is that correct?

A. Yes, sir.

Q. Let us take up the light duty detergents first. Did your company ever market a light duty detergent in a glass container?

A. Mr. Hughes, if you are asking me a question for household purposes—

Q. Yes.

[fol. 395] A. The only container we have had up until the present time has been cans and now we are in plastics.

Q. So that when you started to market a light duty detergent commercially for household purposes you commenced with a can, is that correct?

A. Yes, sir.

Q. And then in 1958 you used polyethylene?

A. Yes, sir.

Q. And was it at that point that you started or that you marketed it in the plastic container?

A. We started this year. We have been designing and doing research from 1958 and we just started this year.

Q. That is, with the advent of the new container, you had this experimentation which you described and you are now starting to market it commercially in these plastic containers?

A. Yes, sir.

Q. Will you tell us the factors which induced you to move from the metal container into the plastic container for this type of detergent?

Mr. Greenberg: Your Honor, may we have a definition of what "you" means. Does it mean the company or the [fol. 396] person on the witness stand or what? I object to the form of the question.

Mr. Hughes: I will try to clarify that.

The Court: All right.

Mr. Hughes: I am asking for this witness's personal opinions based on his experience as an employee of the company.

Q. You understood that, didn't you?

A. Yes.

Q. With that clarification, would you like the question reread?

A. Yes.

(Question read.)

A. Well, with the metal cans we have always had problems with internal liners because liquid detergents penetrate through the liners and cause corrosion, and therefore we were looking for some impermeable material. When linear polyethylene became available and we could get the containers for testing, we put it on tests and when we found out that it would contain it without loss of weight, we became interested in it as a commercial item, and we designed our bottles, and after many research tests decided on one [fol. 397] and went into production on that particular one.

Q. Did you make any consumer preference tests of any sort?

A. Yes, sir.

Q. And what did you conclude with reference to that aspect of the matter?

A. Well, the research showed that the consumer preferred a plastic container over the various types that we had exposed it to.

Q. Is it a fact that the metal container tended to leave rust marks on the sink and places like that in the household?

A. That is a factor, yes, sir.

Q. And you found that to be a factor in your study and analysis of the situation, is that right?

A. I am not so sure of that, Mr. Hughes, as far as that particular study is concerned.

Q. Do you know whether any of the companies ever marketed liquid detergents in glass containers?

A. Yes, sir.

Q. And they were doing this before you went into the liquid detergent field, is that right?

A. Yes, sir.

Q. And they moved from the glass into the metal container, is that right?

A. Yes, sir.

Q. Are you familiar with the factors that induced them to move from glass into metal? I am just asking you in a general way now.

A. I believe they had formulation problems.

Q. And can you be a little more specific on that? What do you mean by formulation problems?

A. The formula in glass would cause problems in metal containers.

Q. Was breakage a factor?

A. I am not sure of that.

Q. In any event, the progress was from glass containers to metal containers, is that right?

A. Yes, sir.

Q. And now that product has moved into the plastic container?

A. It is now in the plastic container, yes, sir.

Q. And are actively marketed in that type of container?

A. Yes, sir.

Q. And in your view will the plastic container in due course substantially occupy that whole area of the market?

[fol. 399] A. Yes, sir.

The Court: Plastics are increasingly taking over, are they not?

The Witness: Yes, sir.

Q. And would it be fair to say that this has been a process of the products finding the ideal containers in which to be marketed?

A. Yes, sir.

Q. Now, heavy duty detergents, is that both in dry form and in liquid form?

A. Yes, sir.

[fol. 400] Q. And in your company would you say that a much greater part of your volume is in the dry heavy duty than in the liquid heavy duty?

A. Yes, sir.

Q. The all-purpose detergent moves in glass in the household sizes, is that correct?

A. Yes, sir.

Q. And that does not move in plastic, so far as you know, is that right?

A. I am sorry?

Q. It does not move in plastic, so far as you know?

A. The all-purpose?

Q. Yes, the all-purpose.

A. No.

Q. And your all-purpose has a trade name 'Genie', is that right?

A. Yes.

Q. And you have no plans to pack your Genie in any other type of container except the glass container, do you?

A. Well, we do have the 64-ounce in a half-gallon can, Mr. Hughes.

Q. Well, but presently you are packaging that in the [fol. 401] half-gallon can and that is the largest size?

A. Yes.

Q. But do you have any plans for changing the container which you are using for your Genie?

A. Not with the present formulation.

Q. Now, of the items that you have testified to on direct examination, the detergents and the insecticides would be the two items that would be in the household division, is that correct?

A. Yes, sir.

Q. And are there literally hundreds of other products in the household division besides these two items concerning which you have testified?

A. I don't know about hundreds; there are others.

Q. Are there many others?

A. Well, you can classify them into toilet soaps and cleansers—

Q. Will you tell us some of these items?

A. Well, we have our toilet soaps, Cashmere Bouquet and Palmolive that are used for bath and hand, and we have the Ajax cleanser for scouring purposes, and we have the Florient deodorant, a household deodorant, and the insecti- [fol. 402] cides, the Kan-Kill insecticides.

Q. And in the household and chemical areas in these classifications there are many, many more products which your company does not even market; isn't that correct?

A. Yes, sir.

Q. Would you say that runs into the hundreds?

A. It could, yes, sir.

Q. Now, in the toiletries and cosmetic field, on your direct examination, you referred to liquid shampoos, is that correct?

A. Yes, sir.

Q. Liquid cream shampoos?

A. Yes, sir.

Q. Liquid hair dressing?

A. Yes, sir.

Q. Liquid deodorants?

A. Yes, sir.

Q. And paste cream deodorants?

A. Yes, sir.

Q. Now, does your toiletry and cosmetics division market other products than these five concerning which you were interrogated?

A. Well, dentifrices and shaving creams are two big [fol. 403] brands with our company, Ribbon Dental Cream and Palmolive Shaving Cream in tubes, jars and aerosols.

Q. As a matter of fact, dentifrice is one of your very big items, is it not?

A. Yes, sir.

Q. The famous Colgate tooth paste?

A. Yes, sir.

Q. A much greater item than any of these items concerning which you testified, is that correct?

A. Well—

Q. In quantity marketed?

A. Possibly.

Q. There is no doubt about it, is there?

A. I don't have those figures to say positively.

Q. And the Palmolive soap is also a very famous and well known product?

A. Yes, sir.

Q. And that is sold in very substantial quantities, is it not?

A. Yes, sir.

Q. In the toiletries and cosmetic field, generally, there are many products which your company does not even manufacture, isn't that so?

[fol. 404] A. Yes, sir.

Q. Can you give us some illustrations of that?

A. Perfumes, eye make-up products, fingernail products are a few of the types.

Q. Now, your toothpaste moves in what kind of a container?

A. We have an aluminum collapsible tube, various sizes.

The Court: Who do you buy that from?

The Witness: The collapsible tubes?

The Court: Yes.

The Witness: We buy those from several companies: White Metal, Sun Tube, which is part of American Can now, Wirz, and I think that's all right now.

Q. And would you say that the specific products that you were examined about on direct examination in your household products and the specific items you were examined about in the toiletries and cosmetics represents only a very small part of the total products that are marketed in the entire household and chemical field and in the entire toiletry and cosmetic field?

Mr. Greenberg: I am going to object to that question. We can ask the witness, I assume, what percentage it represents. [fol. 405] We have an ambiguous term in there, "very small," and I object.

The Court: Yes, I think that question is slightly obscure. Mr. Hughes. You had better reframe it.

Q. If you tried to state it in terms of percentage would you be able to do so?

A. No, sir.

Q. And not being able to do so are you able to give us any expression of the approximate amount that those products bear in relation to the entire household and chemical and toiletries and cosmetics field?

Mr. Greenberg: Your Honor, I will object to that question.

The Court: Overruled.

A. Well, Mr. Hughes, I am not very much up on statistics. My position is to find new packages and get packages.

not to go into the volume. That is up to other departments. I am sorry, I don't have all that information.

Q. And you wouldn't undertake to give his Honor any impressions on that subject one way or the other?

A. No, sir, I would not know, honestly.

[fol. 406] Q. Do you have more than one source of supply for the containers that you buy for your products?

Mr. Greenberg: Your Honor, I will object to that question on the ground that he does not buy the containers. No foundation has been laid for it.

The Court: Are you familiar with the buying of what containers are purchased?

The Witness: I am familiar with whom we work with, but not the actual buying and the prices and so forth. That is not my responsibility.

Q. And you are familiar with the buying policies of your company, is that correct?

A. Generally.

Q. And you are in close liaison with those who do the buying?

A. Yes, sir.

Q. Will you tell me whether your company has more than one source of supply for the containers which it uses for its products?

A. In most cases we have more than one supplier, yes, sir.

Q. And when you say "In most cases," are you thinking of any case where there is—

[fol. 407] A. Well, if the volume is small, Mr. Hughes, we wouldn't have many suppliers, but where it is a large volume it is our responsibility in the packaging department to check out a supplier's package and make sure it meets our specifications and then put it on the approved list, and our purchasing department prefers to have two or three suppliers so that in case of fires or strikes or something that might be unforeseen we still can get containers for production.

Q. It is only where small quantities are involved that you would have a single supplier?

A. Or if we are starting out with a new product, yes, sir.

Q. There are instances where there are small quantities involved?

A. Yes, sir.

Q. Do you have more than one source of supply for your closures?

A. For closures?

Q. Closures, yes.

A. Yes, sir.

Q. Would you say that you had several sources of supply for your closures, more than two?

A. It depends upon what package. As far as Vel, we [fol. 408] have two suppliers of closures for Vel containers.

Q. At least two?

A. Yes.

Q. And in some instances more than two?

A. Yes, sir.

Q. Now, you have spoken about the experimentation that you have done with these various products on your direct examination, and I suppose you are continuing to do that sort of experimentation?

A. Yes, sir.

Q. And so far as you know, everybody in the business does that sort of experimentation?

A. I presume so.

Q. What percentage of that experimentation ever leads to any change in the type of container that you use for a particular end use?

Mr. Greenberg: Your Honor, I will object to that question. It is highly conjectural, highly speculative. I object to the form of the question.

The Court: Can you answer the question?

The Witness: Not in changes of containers, your Honor, only in internal coatings of the container, a specific container.

[fol. 409] Mr. Greenberg: Could we have the last question read back?

The Court: Yes.

(Question read.)

The Court: He said he couldn't answer.

A. I couldn't give you a percentage, Mr. Hughes.

Q. You don't switch back and forth from one container to another from year to year for a particular end use, do you?

A. Will you specify what you mean by switching back from one container to another?

Q. Well, you wouldn't switch from glass to plastic and back from plastic to glass?

A. Oh, no.

Q. In a particular end use?

A. No.

Q. About how long do you experiment before you would make a change in the kind of container you would use for a particular product?

A. We usually ask for about three months for experimental work, and then, because our products are used on human beings, we are very careful and we might go into a sales test in a city to find out how the product is doing and what the results are, and that might take six months. Usual-ly our company takes a year before we ever go nation-wide on a new product.

Q. And sometimes longer, isn't that right?

A. Yes, sir.

Q. Take Dynamo; how long have you been working on that?

A. We have been working on that for the last five years and just launched a sales test this year.

Q. Does your company make a complete line of insecticides?

A. Yes, sir.

Q. Is one of the insecticides which you make a roach and ant killer?

A. Yes, sir.

Q. Is that the product that you were referring to when you were being examined on your direct examination this morning?

A. That's in glass and cans with pumps, yes, sir.

Q. About how many other insecticides do you market?

A. I believe we have two others, one for mosquitoes and that type of insect, and then one for the plant insects.

Q. What type of containers do they move in?

A. They are in metal containers because they are aerosol [fol. 411] products.

Q. They are exclusively in metal?

A. Yes, sir.

Q. And this roach and ant killer is in, did you say, a glass bottle, is that right?

A. Glass bottle and a metal can, and also in an aerosol. Roach and ant is in all three.

Q. Is there a consumer demand for the product in those three types of containers?

A. Yes, sir.

Q. Will you tell us the reasons why you market it in these three varying forms?

A. Well, some women prefer a can and others a bottle, and with a pump for around the baseboards, to use it for roaches and ants that are just crawling along the floor.

Q. Let me see if I understand that. In other words, if you want to dispense that at a floor level, the pump is an undesirable kind of dispenser, is that correct?

A. No, the pump is desirable.

Q. Is a desirable dispenser?

A. Yes.

Q. Will you explain to his Honor why that is?

[fol. 412] A. Well, as you pump you leave a liquid spray that is residual and stays there, because the roaches and ants are not there at the time, and you might go around the baseboard, and then as the roaches and ants come in, why, they will come in contact with it and it will kill them.

The Court: It will kill them?

The Witness: I think so. By test it does.

Q. And would you say that the aerosol container is not as effective for that purpose?

A. Up until recently the type of aerosol valves, if you turn it upside down, the type we use, it would be ineffective.

Q. It is the same idea as when the shaving can starts to get low; if you tilt it nothing comes out?

A. That's right.

Q. If you keep it up straight it does come out?

A. That's right, in our type of valve.

Q. So you wanted a separate type of container to take care of that particular function, is that right?

A. Yes, sir.

Q. What was the third kind? Did you say there was a third kind of container in which that particular ant killer [fol. 413] or insecticide was marketed or was it just those two?

A. We have the type for mosquitoes, flying—

Q. No, I was confining myself still to the roach and ant killer. Were there just those two mediums through which that was marketed?

A. Yes, sir.

Q. Now, turning to Halo shampoo, that is a liquid shampoo, is it not?

A. Yes, sir.

Q. And it is packed exclusively in glass bottles by your company commercially?

A. Except for the time we made a sales test in regular polyethylene.

Q. Well, you made a test, but from the commercial standpoint you have been marketing it exclusively in glass bottles?

A. Exclusively in glass.

Q. And you are now?

A. Yes, sir.

Q. Another product that you mentioned is your Lustre-Creme shampoo, is that right?

A. Yes, sir.

Q. And that is in two forms, both a cream and a liquid, is [fol. 414] that right?

A. A clear liquid and an emulsified liquid and a-paste cream.

Q. And the cream is packed in opal jar, is that correct?

A. That's correct.

Q. And to a limited extent in collapsible lead tubes?

A. Yes.

Q. Now, the liquid is exclusively in glass bottles, is it not?

A. Yes, sir.

Q. Now, you referred to certain hair dressings as of the brilliantine variety, is that correct?

A. Yes. That is a sort of a mineral oil type, yes.

Q. How do you pack that?

A. In glass.

Q. Exclusively?

A. Yes.

Q. And do you have any present plans for packaging brilliantine in any other type of containers except the glass that you are presently using?

A. None at the present time.

[fol. 415] Mr. Hughes: May I have just a moment, your Honor?

(Pause.)

Q. Mr. Egan, I have been asked to clarify what Dynamo is. Will you tell us what that is?

A. Dynamo is a heavy duty liquid detergent.

Q. Do you make a deodorant product under the name Veto?

A. Yes, sir.

Q. And do you package that in a cream form?

A. Cream and liquid.

Q. Yes, but one of the forms is a cream form?

A. Cream.

Q. In that form what type of container do you use?

A. That is an opal jar.

Q. And it is exclusively an opal jar, is it not?

A. Yes, sir.

Q. Now, in 1951 or thereabouts did you reformulate it into a liquid and test market it in plastic bottles?

A. In a squeeze type of polyethylene container, yes, sir.

[fol. 416] Q. And it was commercially marketed in 1952 in the liquid form also, is that correct?

A. I believe the date is right, yes.

Q. So that you now have both the cream and the liquid, is that correct?

A. That's right.

Q. And the liquid moves exclusively in the squeeze bottle?

A. Yes, sir.

Q. And, of course, that is an entirely different formulation than the cream, isn't it?

A. Yes.

Q. Mr. Egan, is it a fact that in your laboratory testing that you have described or market research testing that you have described you test among other things for determining the physical characteristics of the products from the

point of view of suitability for the use which you intend to put it to?

A. Yes, sir.

Q. Following that you then conduct these market tests to determine whether there is a consumer acceptance of the product in that vehicle?

A. Yes.

Mr. Hughes: No further questions.

[fol. 417] Redirect examination.

By Mr. Greenberg:

Q. Sir, do you know the names of the only companies producing opal jars at the present time?

A. The only companies?

Q. Do you know the names of the companies producing opal jars at the present time?

A. I know of two, Mr. Greenberg; Hazel-Atlas and Wheaton.

Q. Can you recall any others, sir?

A. No.

Q. Isn't it a fact that there may be just one other, and that is all?

A. There could be. I wouldn't really know.

Q. But you can only recall these two?

A. Yes, sir.

Q. Sir, have you ever engaged in joint research activities with glass container manufacturers to lightweight glass containers that you use?

A. Yes, sir.

Q. Now, would you describe these joint activities for us? What did you do?

A. Well—

Mr. Hughes: I object to this as repetitious.

The Court: I will allow it.

A. We met with their technical people and decided on the [fol. 418] container that we wanted to have lightened in weight and they would make up a single cavity mold to size up that container which would have a proper volume and head space, and after they made the containers, we would fill

them and put them through the various tests in the laboratory, shipping tests and rough handling tests, to see if they would stand up to the rigors of transportation; also have them tried out by consumers to see if there was any objection to them.

Q. What types of glass containers have been subject to this research?

A. Halo Shampoo was the package there, and then I believe we worked with the opal jar from Hazel-Atlas and lightened the weight up of that.

Q. You worked with Hazel-Atlas?

A. Yes.

Q. Sir, have you engaged in any joint activities with can manufacturers to get around this corrosion problem?

A. Yes, sir.

Q. And can you describe the genuine efforts that were made along that line?

A. Yes. We would have their technical people in and tell [fol. 419] them about the chemical and physical characteristics of our product, and they would agree to make up certain types of cans with internal lacquers and then we would send them a 55-gallon drum of that same detergent that we were going to test; they would put them up in test packs under the same conditions as we did, and after aging for a specific length of time we would exchange information regarding our tests.

Q. Sir, do you know whether your company keeps track of costs of various kinds of containers that it uses?

A. Yes, we do.

Q. You do keep track of all the costs of plastic, glass and cans?

A. I personally don't, but the company does.

Q. I mean the company. The answer is yes, sir?

A. Yes, sir.

Q. Talking now about the valves for the aerosol cans, sir, has there been a valve perfected which will give you the same kind of spray as the plunger?

A. Yes, there has been a new valve that has been developed by Seaquist that you can turn upsidedown and get a spray.

Mr. Greenberg: I have no further questions.

[fol. 420] Recross-examination.

By Mr. Hughes:

Q. Do you buy opal jars from Hazel-Atlas and Wheaton?

A. Mr. Hughes, I am not in that end of the division any longer, and so I can't tell. Mr. Brown will be a witness, I understand, and he will be able to tell that more specifically.

Mr. Hughes: Your Honor, I have a few questions that are really not properly recross. They were questions that I had intended to cover on cross-examination.

The Court: All right, we will allow it.

Q. Now, returning to the field of liquid detergents, is the formulation for the all-purpose liquid detergent in glass a different formulation from what would be necessary if you were to attempt to market that all-purpose detergent in some other type of container such as a can?

Mr. Greenberg: I will object to that question, your Honor. It is unduly complex. It seems to be conjectural, but I cannot remember the first part.

The Court: Let's have the question read.

(Question read.)

[fol. 421] Mr. Greenberg: I object to the question.

The Court: Objection overruled.

A. I mentioned earlier, Mr. Hughes, that our Genie formulation in the 16 and 32-ounce containers are glass; in the 64-ounce container it is a half-gallon can.

Q. If you attempted to—

The Court: That is the same substance in each?

The Witness: Yes, sir.

The Court: Only in different quantities?

The Witness: Yes.

Q. Now, if you attempted to market an all-purpose detergent in a plastic container, would the formulation have to be different?

A. Oh, yes. This formulation has been put in plastic, and the plastic does not contain it.

[fol. 422] Q. So that before you could even consider mov-

ing from glass into plastic you would have to devise a different formulation, is that correct?

A. Yes, sir.

Q. And, in effect, a new formulation is a new product, isn't it?

A. No, we might still put it out under the same brand name.

Q. And with that qualification it is a new product, isn't it?

A. Yes.

The Court: Well, let us say it is a different product.

Q. would that be true of the other types of detergents we have spoken of, the heavy duty detergents, if you tried to change from one container to the other, you would have to change the formulation; isn't that correct?

A. No, in the light duty the formulation is the same in cans as it is in plastic.

Q. I said heavy duty.

A. Oh, heavy duty?

Q. I said if you tried to change from one container to another wouldn't there have to be a change in formulation? [fol. 423] A. No, sir, not heavy duty.

Q. How about the light duty detergent, was there a change in formulation when you started to move from the metal container into the plastic container?

A. No, sir.

The Court: Is there anything further, Mr. Hughes?

Mr. Hughes: No, nothing further, your Honor.

The Court: All right, you may step down, Mr. Witness. Thank you.

(Witness excused.)

The Court: Before we go on with a new witness, we might as well take our afternoon recess now.

(Short recess.)

The Court: All right, you may call your next witness, Mr. McManus.

Mr. McManus: Mr. Warren.

ROBERT WARREN, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Warren?

A. Brockway Glass Company, Brockway, Pennsylvania.

[fol. 424] Q. And where is your home?

A. Brockway.

Q. What is your position in Brockway Glass Company?

A. I am a vice-president and a director.

Q. How long have you been employed by Brockway Glass Company?

A. Full-time, 15 years.

Q. Were you employed prior to that?

A. I worked in the summers before that.

Q. Were you employed in any other endeavor than Brockway Glass Company?

A. How is that?

Q. Have you been employed by any other company other than Brockway Glass?

A. No.

Q. Does Brockway Glass Company publish sales figures?

A. Yes, sir.

Q. And do they do it on a fiscal basis?

A. Yes, sir.

Q. On a calendar year basis?

A. Our fiscal year closes September 30th.

Q. So the last one, sir, would be September 30, 1959?

[fol. 425] A. Yes, sir.

Q. What was your dollar volume on sales for all products approximately for that year?

A. Just over 50 million dollars.

Q. Where are the Brockway Glass plants located?

A. We have two plants in Brockway, Pennsylvania, and one in Muskogee, Oklahoma, one in Lapel, Indiana, one in Freehold, New Jersey, and one in Parkersburg, West Virginia; and our subsidiary, our wholly-owned subsidiary, Tygart Valley Glass Company, has a plant in Washington, Pennsylvania.

Q. Does your company make any products other than glass containers?

A. No, sir.

Q. Do you manufacture caps?

A. No, sir.

Q. At the present time are you manufacturing any other type of container other than glass?

A. We are beginning to manufacture plastic containers. We are not—we do not feel that we are in production on plastics as yet but we have a pilot plant operation.

Q. Where is that location?

[fol. 426] A. In Massachusetts.

Q. And could you tell me the type of plastic containers that you are manufacturing?

A. Polyethylene, both high density and low density.

Q. And could you tell me the factors that made you decide to go into the manufacture of plastic containers?

A. We felt that plastic containers would in some cases supplant glass. We found that some of our customers were asking us for plastic containers, and we felt that the sale of plastic containers tied in very closely to the sale of glass.

Q. Is it possible to generalize as to the type of customers that were asking for plastic containers?

A. Yes, sir. I would say they are mostly in the pharmaceutical or cosmetics and household chemical field.

Q. Are you familiar in a general way with the census classifications of glass containers?

A. Yes, sir.

Q. Does your company make wide-mouth glass containers?

A. Yes, sir.

Q. Does it make narrow neck glass containers?

[fol. 427] A. Yes, sir.

Q. Does it make, referring to the census classifications, food containers?

A. Yes, sir.

Q. Soft drinks?

A. Yes, sir.

Q. Beer?

A. Yes, sir.

Q. Household and industrial?

A. Yes.

Q. Toiletries and cosmetics?

A. Yes, sir.

Q. Have I missed one, by any chance, to your knowledge?

A. I think you have got all of them. The only one we don't make is milk, dairy products.

Q. Under the census classifications, you make all of them, whether it be wide mouth or narrow neck, is that correct?

A. Yes.

Q. Do you make any green glass?

A. No.

Q. Do you make any colored glass at all?

A. We make amber glass.

[fol. 428] Q. Do you make blue glass?

A. No.

Q. Now, when you sell your glass containers do you put them into another container?

A. Yes, it is placed usually in a corrugated paper container.

Q. And when you say "usually," could you give us an estimate of approximately what percentage of the glass containers are in corrugated containers?

A. I would judge between 90 and 95 per cent.

Q. Now, in the pricing of your glass containers is the cost of the corrugated shipping container significant?

A. Yes, sir.

Q. Could you estimate approximately what the cost of the corrugated shipping container is in relation to the final cost of the glass container?

A. I judge the paper container would be between 20 and 25 per cent of the selling price of the whole package.

The Court: I take it that you do not make your own corrugated containers, do you?

The Witness: No, sir.

The Court: You purchase those from someone else?

[fol. 429] The Witness: Yes, sir.

Q. Now, the plants that you have listed are located in the eastern half of the United States, are they?

A. Pardon me?

The Court: Mr. McManus, you are again dropping your voice.

Q. Are the plants of the Brockway Glass Company east of the Rocky Mountains?

A. Yes, sir.

Q. Does your company have any western plants?

A. No, sir.

Q. Does your company sell a full line of glass containers over on the West Coast?

A. No, sir.

The Court: Do you have any customers on the West Coast?

The Witness: We sell some prescription bottles on the West Coast and a few stock lines of pharmaceutical bottles.

The Court: But no food products?

The Witness: No, sir.

Q. Could you give us a rough estimate of what the percentage of your sales on the West Coast would be in relation to your total sales?

[fol. 430] A. Oh, only 1 or 2 per cent.

Q. You indicated that you only engage in manufacturing glass containers and you manufacture no caps for those containers?

A. That is right.

Q. Referring to the vacuum type of cap, are you familiar with that type of cap?

A. Yes, sir.

Q. To your knowledge is the vacuum type of cap used on glass containers other than in the food field?

A. Not to my knowledge.

Q. Is it important in the enclosing or in putting the cap on a glass container that there be a perfect seal?

A. Yes, sir.

Q. And what is the purpose, why is it necessary to have that perfect seal?

A. To preserve the product.

Q. Now is it necessary for the glass manufacturer to consult with the cap manufacturer to get that perfect seal?

A. Yes, sir.

Q. And are there standard specifications for caps to fit certain glass containers?

[fol. 431] A. There are standard specifications on glass

containers. We are not aware of standard specifications on caps.

Q. Has your company ever had an occasion when a customer would call you and tell you that a cap was not fitting the glass container or making a perfect seal?

A. Yes, sir.

Q. You have had such occasions?

A. Yes, sir.

Q. Does it happen frequently?

A. I don't know how to answer that.

Mr. Johnson: I object to that question, your Honor.

The Court: I sustain the objection. He says that he cannot answer it, anyway.

Q. It has happened, though, has it?

A. Yes, sir.

Q. Well, the people call your company, is that correct?

A. Yes, sir.

Q. What would you do then? Will you describe what takes place?

A. We would send a service man to the customer's plant to evaluate the problem.

[fol. 432] Q. And do you make a decision then or do you attempt to work it out with the customer, what the problem is?

A. Yes, sir.

Mr. Johnson: I am going to object to that. I do not understand the question.

The Court: Will you repeat it?

(Question read.)

Mr. Johnson: I do not know what he means by "work it out."

Q. Well, do you try to decide—

The Court: I think it is reasonably clear, Mr. Johnson.

Q. What is your answer?

A. We would, yes, sir.

Q. Is it necessary for you to consult with the cap manufacturer also?

A. Sometimes it is; sometimes it is not.

Q. When would be the time or when would you be required to consult with the cap manufacturer?

A. When we would have to?

Q. Yes.

A. Well, those would be cases where there was no obvious or clear fault with the glass but the cap was not sealing, [fol. 433] which may then be a fault of the cap or a fault of the machine which applies the cap.

Q. To your recollection has this situation ever arisen when you had consultations between your company and the cap manufacturer?

A. Yes, sir.

Q. Do you recall whether that happened before 1956?

A. Yes, sir.

Q. Has your company ever been required prior to 1956 to consult with White Cap Company, manufacturers of vacuum caps?

A. Yes, sir.

Q. Have there been occasions after 1956 where you had to consult with cap manufacturers?

A. Yes, sir.

Q. And were there occasions when you would have to consult with White Cap Company, a division of Continental Can?

A. Yes, sir.

Q. So when a problem arose on a vacuum packing line prior to 1956, the packer would be required to call both the cap manufacturer and the glass manufacturer?

A. Yes, he would, unless it was obviously the fault of [fol. 434] the glass or obviously the fault of the cap.

Q. Now, do certain glass companies make both glass containers and vacuum caps, to your knowledge?

A. Yes, sir.

Q. Do you consider this to be a sales advantage?

A. Yes, sir.

Q. And why do you say that, Mr. Warren? Why do you say it is a sales advantage?

A. Because our customer can then buy the complete package from one company, and particularly in the event of difficulties, he does not have two different companies in his plant arguing the merits of what is at fault.

Q. Mr. Warren, do you attend the National Canners Association Conventions?

A. I have.

Q. Do you attend it as a representative of the Brockway Glass Company?

A. Yes, sir.

Q. Does your company have displays at those meetings?

A. Yes, sir.

Q. What is the purpose of attending those meetings and having those displays?

[fol. 435] The Court: Presumably he is selling to canners and he goes to the Canners' Conventions to contact his customers and to help sales.

Mr. McManus: That is right, your Honor, but I would like to put it on the record. I do not think it will take up too much time.

The Court: Those are things, it seems to me, that are so obvious, but I will permit you to ask your question.

Is that what you go there for?

The Witness: Yes, sir.

Q. Do the can manufacturers also attend these meetings?

A. Yes, sir.

Q. Does your company have in its plant Hartford Empire I.S. equipment?

A. Yes, sir.

The Court: What does I.S. stand for?

The Witness: It stands for individual sections.

Q. Could you explain to us what "individual sections" means?

A. The machines are made up of four or five or six separate forming sections which operate semi-independently.

The Court: Does it have something to do with the manufacture of glass containers?

The Witness: They do manufacture glass containers.

The Court: They are the machines that manufacture the glass containers?

The Witness: That is right.

The Court: In other words, you put the raw material in the machines and it comes out in container form?

The Witness: That's right.

Q. Mr. Warren, could you very briefly explain that operation?

A. Well, you melt the batch, which is primarily sand and soda ash and limestone, in a large tank, at about 2500 degrees, and then the glass is fed out in what we call gobs into the forming machine—

Q. That would be the Hartford Empire machine?

A. Yes, although we have a few Lynch machines in our company. They are a different type of machine which does the same thing.

And from the machine the bottles go into an annealing oven, which we call a lehr, which tempers them so they do not break when they are cooled.

The Court: And then they are cooled?

The Witness: Yes, sir, then they are cooled. At the end [fol. 437] of the lehr, they are packed usually in corrugated paper containers.

Q. Now, with the Hartford Empire equipment that you have, can that make narrow-neck glass containers?

A. Yes, sir.

Q. Of all types other than colors?

A. Yes, sir.

Q. Can it make wide-mouth glass containers?

A. Yes, sir.

Q. Of all types?

A. Yes, sir.

Q. Is it possible to convert this equipment from the manufacture of wide-mouth glass containers to the narrow-neck glass containers?

A. Yes, sir.

Q. Would you know the approximate time that would be taken to convert the equipment from the manufacture of wide-mouth glass containers to narrow-neck glass containers?

A. Well, if the machine is adapted in order to do this readily, once you have that as part of your machine, you can convert, oh, in from 12 to 18 hours. We consider it an overnight conversion.

Q. And does your company make these conversions?

[fol. 438] A. Yes, sir.

Q. They have done it in the past?

A. Yes, sir.

Mr. McManus: That is all I have, your Honor.

The Court: You may examine, Mr. Hughes or Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Warren, Brockway has several subsidiaries does it not?

A. We have two, the Tygart Valley Glass Company in Washington, Pennsylvania, and Demuth Glass Works in Parkersburg, West Virginia.

Q. What does Demuth make?

A. Demuth makes glass tubing.

Q. And it is a wholly-owned subsidiary?

A. Yes, sir.

Q. Do you have a plant in Crenshaw, Pennsylvania?

A. I mentioned two plants in Brockway. Crenshaw is really a part of Brockway.

Q. There was some discussion of corrugated containers used in packaging glass containers. Does your company buy all of the corrugated containers that is used to ship its glass containers?

[fol. 439] A. Yes, sir.

Q. None of them are furnished by customers?

A. Well, yes. I should say yes in the case of some beer containers—they are supplied by the customers.

Q. Can you undertake to estimate for us what proportion of them are supplied by customers?

A. 6 or 7 per cent.

Q. Are you familiar with the term "glass finish"?

A. Yes, sir.

Q. Will you tell us what a glass finish is?

A. The finish is the upper part of the bottle on which the closure fits.

Q. Is there any standardization of glass finish?

A. Yes, sir.

Q. How are standards arrived at?

A. Standards are worked out in a committee of the Glass Containers Manufacturers Institute.

Q. They are worked out in the committee and then what happens to them?

A. Then the Glass Containers Manufacturers Institute publishes a standard finished print which is distributed to the industry.

Q. And that publication is available to all glass container manufacturers, is that correct?

[fol. 440] A. Yes, sir.

Q. How many times since 1956 has your company had occasion to have joint consultation with cap manufacturers on a problem of the closure fitting the bottle?

A. I don't think I could answer that. We have several service men who are constantly visiting our customers, and they have minor problems and major problems. The minor problems probably we do not hear about. They may happen but I don't think I could identify them.

Q. Does Anchor Hocking make vacuum-type closures?

A. Yes, sir.

Q. Are Anchor Hocking closures used on any of the glass containers which you make?

A. Not to my knowledge. Anchor Hocking makes a limited line and in most cases they are used on their own glass.

[fol. 441] Q. Does Owens-Illinois make vacuum type closures?

A. Yes, sir.

Q. Are any of Owens-Illinois closures used on your glass?

A. Not to my knowledge. Their situation is about the same as Anchor's.

Q. One of your glass container lines is beer bottles, is it not?

A. Yes, sir.

Q. You manufacture both returnable and non-returnable bottles?

A. Yes, sir.

Q. Would you be able to give me an estimate as to how many times returnable bottles are used?

A. About twenty times.

Q. Your company is in the process of building a new glass container plant, is it not?

A. Yes.

Q. Where is that?

A. In St. Paul, Minnesota.

Q. Has your company been doing other expansion in the glass container field, recently?

A. No, sir.

[fol. 442] Q. Your only expansion currently is in the new plant in St. Paul?

A. Yes.

Q. How large a plant will that be?

A. We expect ultimately to have six or seven forming machines there.

The Court: How many forming machines have you presently got, overall, roughly?

The Witness: Let's see, about 50.

Q. On your direct examination you indicated that your company was in the process of going into the plastics business now.

A. Yes.

Q. Did I understand you to say that you were developing a blowing machine of your own?

A. Yes, sir.

Q. And that has been developed to a point where it is ready for commercial production, correct?

A. Yes, sir.

Q. Is there any reason why your company could not manufacture vacuum type closures?

A. Why we could not?

Q. Yes.

A. No, sir.

[fol. 443] Q. Are beverage bottles one of your larger glass container lines?

A. Beverage bottles are an important line with us, but we do not classify them one of our larger lines, no, sir.

Q. Is it as important as beer bottles?

A. Yes, sir, about the same.

Q. Now, with respect to soft drink bottles, was Hazel Atlas in that field prior to its acquisition by Continental Can?

A. No, sir.

Q. Was it in the beer bottle field?

A. No, sir, unless it would be on the West Coast.

Q. With respect to that, you do not know, is that so?

A. No, I do not know that.

Q. Were you in the room, sir, when Mr. Egan testified a few minutes ago?

A. Yes, sir.

Q. Mr. Egan referred to a purchasing policy of having more than one source of supply. Have you observed whether that policy is followed by many of your customers?

A. Yes, sir, it usually is.

[fol. 444] Q. Could you tell me, sir, whether the price of your glass containers bears a direct relation to the labor costs used in manufacturing containers?

A. I wouldn't say there is a direct relationship. Labor is our biggest single cost, so there has to be a relationship, but I don't think you will find any direct relationship between our labor contract increases over the past several years and glass container prices.

Q. Does your company publish a glass container price list, sir?

A. Yes, we do.

Q. Do you ever sell glass containers at less than that list price to meet the price quoted by another glass container manufacturer?

A. Yes, sir.

Q. Do you ever sell your glass containers at less than that list price to meet the price quoted by can manufacturers?

A. No, sir, I don't think we do.

Mr. Johnson: May I take a moment, your Honor?

The Court: Yes.

(Pause.)

[fol. 445] Q. Are you familiar with the sales of your company for the last several years, the dollar amount, total sales?

A. Generally familiar.

Q. Going back to the year 1954, would the net sales be approximately \$23 million?

A. That sounds right.

Q. 1955, \$25 million?

A. Yes, sir.

Q. 1956, \$28 million?

A. Yes, sir.

Q. 1957, \$31 million?

A. Yes, sir.

Q. 1958, \$34 million?

A. Yes, sir.

Q. 1959, \$51 million?

A. Yes, sir. That is due to our merger with Tygart Valley.

Q. The fact that your sales went up in that year?

A. Yes, sir, they contributed.

Q. But that is not true of any year except the last year, is that so?

A. That's right.

Q. Are you familiar with your net profit figures in the [fol. 446] same way?

A. Yes, sir.

Q. For 1954, one million three?

A. Yes, sir.

Q. 1955, one million four?

A. Yes, sir.

Q. For 1956, one million four?

A. Yes, sir.

Q. 1957, one million six?

A. Yes, sir.

Q. 1958, two million?

A. Yes, sir.

Q. For 1959, three million four?

A. Yes, sir.

Q. These profit figures are after taxes?

Mr. McManus: Your Honor, do you think we could put these documents that he is reading from in evidence?

The Court: At least there isn't any reason why they should not be marked for identification. If you want to see them, you can put them in.

Mr. McManus: I would like to take a look at them.

The Court: Let's mark them for identification. I take it [fol. 447] these are the reports for Brockway for these respective years?

Mr. Johnson: That's right.

(Marked Defendants' Exhibits C-1 and C-2 for identification.)

Q. These earnings figures from your company, Mr. War-

ren, represent a return that indicates that your company has a very efficient operation, does it not?

A. Yes, sir.

Q. As a matter of fact, other than Owens-Illinois Glass Company, your rate of return on sales is the highest in the industry, is it not?

Mr. McManus: Your Honor, I would like to object. There is no showing here that anyone has any knowledge of what Owens-Illinois rate of return is.

The Court: If he knows he can answer. If he doesn't know he will say so.

A. I think the answer to that is yes.

Mr. Johnson: That is all.

Redirect examination.

By Mr. McManus:

Q. Mr. Warren, are you able to tell us your relative position in the glass container industry? Do you rank in the first five or do you know?

[fol. 448] Mr. Johnson: I object to that question.

The Court: Oh, no, objection overruled.

Now, gentlemen, look, you each ask questions without laying any real foundation for them with somebody who would be presumed to know in the industry. I am going to let questions like that be asked. There is no use objecting to it unless you have something specific. Overruled.

Go ahead.

Q. Will you answer that?

A. We consider ourselves fourth in the glass container field.

Q. Who would you consider the first three?

A. Owens-Illinois, Hazel-Atlas Division of Continental Can, and Anchor Hocking.

Q. They would be in the first three?

A. Yes.

Q. Now, you said that you had just built or are building a new plant?

A. In St. Paul.

Q. Yes.

A. It is to be built this coming year.

Q. Do you know, and do you have no objection to testifying to the cost of the construction of that plant?

[fol. 449] A. We estimate cost of construction of the plant at something over a million dollars per machine.

Q. And how many machines are you going to have?

A. Six or seven.

Q. Now, you were asked is there any reason why you could not go into the manufacture of vacuum containers, is that correct?

A. Yes, sir.

Q. Is there any reason why Continental Can Company could not have gone into the manufacture of vacuum caps in 1956?

A. No, sir.

Q. To your knowledge did Owens-Illinois Company acquire a company who was manufacturing vacuum type closures?

A. Owens-Illinois?

Q. Yes. Did they, to your knowledge?

A. Recently?

Q. No. I just want to know if you know.

A. I don't know that.

Q. To your knowledge did they develop their own machinery for the manufacture of vacuum caps?

[fol. 450] A. As far as I know they did, yes.

The Court: But you haven't any accurate knowledge on that subject either one way or the other, or have you?

The Witness: If they acquired anybody, it was several—many years ago. There was a lot of mergers and acquisitions going on that I am not familiar with.

Q. How long ago—when you say a number of years ago, would that be 20 or 30 years?

A. Well, say over ten years ago.

Q. Would your answer be the same in regard to Anchor Hocking Glass Company in so far as acquiring a manufacturer of vacuum closures?

The Court: Do you expect to have any Anchor Hocking witnesses?

Mr. McManus: Yes, sir, I will ask him.

The Court: Ask them.

Q. Now, you testified that to your knowledge Hazel-Atlas was not making soft drink bottles?

A. Yes, sir.

Q. And what period of time were you covering there?

A. Oh, I was covering all the time up to their acquisition [fol. 451] tion by Continental Can.

Q. Now, this is just from your own general information:

Have you ever looked at the census records or GCMC reports specifically to see if they were making soft drink bottles?

The Court: If you are going to have census reports, the census reports speak for themselves. It makes no difference in the world whether this witness ever looked at them or never looked at them. I don't want any more asking of witnesses about whether they looked at documents that are going to go in evidence because that does not get us any farther at all.

Mr. McManus: That is all I have of this witness.

The Court: Anything further?

Mr. Johnson: Yes.

Recross-examination.

By Mr. Johnson:

Q. Mr. Warren, would you tell me what the total sales of Ball Bros. Glass Company was for 1959?

A. I don't know.

Q. Would you tell me, sir, what the total sales for Knox Glass Company were for 1959?

A. I don't know that either.

[fol. 452] Q. Would you tell me, sir, what the glass container sales for Armstrong Cork Company were for 1959?

A. No, sir, I don't know.

Q. Could you tell me what the sales for Wheaton Glass Company were for 1959?

A. No, sir.

Mr. Johnson: That is all.

The Court: All right, you may step down, Mr. Witness. Thank you.

(Witness excused.)

Mr. McManus: May we approach the bench, your Honor?

The Court: Yes. Are you finished for the day now?

Mr. McManus: That is what I wanted to tell you, if I could.

(Discussion at the bench off the record.)

(Adjourned to June 16, 1960, at 10.30 o'clock a.m.)

[fol. 453] New York, June 16, 1960; 10:30 o'clock a.m.

Trial resumed

The Court: All right, Mr. McManus.

Mr. McManus: Mr. Fisher, will you please take the stand.

WILLIAM V. FISHER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Fisher, by whom are you employed?

A. The Anchor Hocking Glass Company.

Q. And what is your position with that corporation?

A. I am president of the corporation.

Q. Where are the headquarters of the corporation?

A. The general offices are in Lancaster, Ohio.

[fol. 454] Q. And is your home in Lancaster also?

A. Yes, sir.

Q. The Anchor Hocking Glass Company is engaged in the manufacture of glass containers, is that correct?

A. Yes, sir.

Q. And it has plants throughout the United States?

A. Yes, sir.

Q. Where are those plants located?

A. New Jersey, Maryland, Florida, Pennsylvania, Indiana; California.

Q. Do you make a full line of glass containers, both wide mouth and narrow neck?

A. We make both wide mouth and narrow neck, yes, sir.

Q. Do you have a general knowledge of the census classifications for glass containers?

A. Yes, sir.

Q. Do you make a full line of glass containers under all of those census classifications?

A. No, sir, we do not manufacture milk bottles.

Q. Do you manufacture—

The Court: Mr. Fisher, who does manufacture milk bottles? I ask that because everybody denied vigorously manufacturing milk bottles. Somebody does manufacture them.

The Witness: Your Honor, Thatcher Manufacturing, the Buck Glass Company, the Lamb Glass Company, and the Owens-Illinois Glass Company.

The Court: Thank you.

Q. Do you manufacture any colored glass containers?

A. We manufacture white glass, clear glass, that is, crystal and amber glass. The white is known, Mr. McManus, as opal.

Q. At what locations do you manufacture opal, at which plant locations?

A. Baltimore, Maryland.

Q. And at what plant location do you manufacture amber glass?

A. We manufacture amber in California, Winchester, Indiana, Connellsville, Pennsylvania, Salem, New Jersey, Jacksonville, Florida.

Q. Do you know who the other companies—

A. Mr. McManus, could I make an amendment to my former statement?

Q. Yes, sir.

A. You asked me what colors we manufacture. I left out Georgia green, which is Coca-Cola glass and emerald green [fol. 456] which is another form of soda water glass.

Q. In addition to yourself do you know the other principal

manufacturers of opal glass, that is, opal glass containers?

A. What do you mean by hotel?

Q. Opal—you said white glass was opal.

A. Oh, yes, I misunderstood you.

Q. Yes:

A. Yes, I think I do.

Q. Who would they be?

A. Continental Can Company, the Hazel Division, and the Wheaton Glass Company.

Q. And that would be all that you know of?

A. Those are the ones I am certain of. I am not certain of Owens-Illinois, whether they do or not.

Q. Now in addition to glass containers what other products do you manufacture?

A. We manufacture closures, both metal and plastic, and we manufacture glassware, commonly known as tableware, for household and table use.

Q. Now, in limiting ourselves to the glass container end of your business, are you able to estimate what position you are in the glass container industry, either 1, 2, 3, 4, or 5?

[fol. 457] A. I think we are rated in the No. 2 position.

The Court: No. 1 would be Owens-Illinois?

The Witness: That is right.

The Court: And No. 2 would be you?

The Witness: Yes, sir.

The Court: And No. 3 would be Hazel-Atlas?

The Witness: Yes, sir.

Q. Does the glass container industry negotiate on an industry basis with any of the labor unions?

A. Yes, sir.

Q. And which one would that be?

A. The glass container industry—the major portion of its employees are bargained for by the Glass Bottle Blowers of America—Glass Bottle Blowers Association of America.

Q. And have you participated in any of those negotiations?

A. Yes, sir.

[fol. 458] Q. Recently?

A. During 1959 and early '60.

Q. And during the course of those negotiations wage rates for labor are set?

A. Yes, sir.

Q. Now, is the wage rate the same all over the United States for members?

A. No, sir. I might say that the wage rates for machine operators, who are the key employees of glass, members of the Glass Bottle Blowers Association, is first set, set by industry-bargaining arrangement. The rest of the employees are bargained for by the individual companies. That is, the miscellaneous employees are bargained, their rates are bargained with the union by the individual companies, with the exception of California. There the miscellaneous are being bargained for by the majority of the manufacturers.

Q. I see. Now, are the machine operators, the rates paid to machine operators, do they vary in different sections of the country?

A. They vary between the East Coast and the West Coast. There also is some variation due to local conditions between companies.

Q. I see.

[fol. 459] A. (Continuing) But when a wage rate is set, it is the pattern of the wage that is set which is applied to the rate as being paid by any one company.

Q. Now, you said that the wage rate for the machine operators varied between the East Coast and the West Coast.

A. Yes, sir.

Q. Could you tell me in 1959 and '60, when you were negotiating, which area had the highest wage rate?

A. The West Coast, the West Coast had the higher rate.

Q. For the period of time that you have been negotiating with the Glass Bottle Blowers Association, has the wage rate on the West Coast always been higher than on the East Coast?

A. I believe it is safe to say it has been traditionally higher.

Q. In the areas that this wage rate is higher, the West Coast areas, in which states are glass container plants located?

A. Would you please restate that?

Q. Yes, sir. You said that on the West Coast the wage rates were generally higher than on the East. In which

[fol. 460] states on the West Coast are the rates higher, which states are represented?

A. California, Oregon, Washington. Those are where the plants are located.

Q. That is where the glass container plants are located?

A. That's right.

Q. Now, Mr. Fisher, how long have you been associated with the Anchor Hocking Glass Company or its predecessor company?

A. Do I have to tell that?

Q. Approximately.

A. About 40 years.

Q. And could you tell me generally, first, about the formation of the Anchor Hocking Glass Company, how it grew?

Mr. Hughes: May I inquire what the relevance is in going into the history of the formation?

The Court: You may inquire.

Why do you say it is relevant?

Mr. McManus: Your Honor, what I would like to do with Mr. Fisher, I would like him to go quickly through it to show what his background is with the two companies, and then also I would like for him to show the change in improvement [fol. 461] in machinery over the years. I don't want to take a great deal of time with it, but I would like to do it if I could.

Mr. Hughes: Well, your Honor, it seems to me those are two separate lines of inquiry. I object to any questions on the history of the formation of the Anchor Hocking Company on the ground that it is irrelevant and immaterial.

The Court: Well, I take it that Mr. McManus is not trying to elicit the corporate history of this enterprise; he is rather interested in the mechanical development of the industry. Now, if that be so, it seems to me that this might have some bearing or might give the Court some greater knowledge of the industry and its background, and I will take it on that basis.

Mr. McManus: And that is the basis that I would like to give it on, your Honor.

Q. Could you tell us, Mr. Fisher, since you have been with

either Anchor or its predecessor company, how this company has grown, in a general way, sir?

A. Do you mean in terms of—I want to understand.

Q. Yes.

A. In terms of dollar development or—

[fol. 462] Q. No, sir.

A. —or in terms of mechanical or evolutionary development?

The Court: I think evolutionary is what he wants here.

Q. Evolutionary, yes, sir.

A. Well, I entered the glass business, your Honor, in 1919. It was a very few years before that that the automatic machine started to make its appearance on the scene. Probably the first machine of that sort was the Owens machine. That produced quantity production. It was followed with the advent of the Hartford Empire feeder and the Miller & Lynch machines. That evolved two separate processes. Owens' machine produced glass by the suction method, sucking it up out of the furnace into a mold cavity. The Hartford process formed a gob and cut it off and deposited it the opposite way into a mold cavity. The smaller members of the industry largely went to the gob-fed method of producing glass. Owens, of course, produced by the automatic, by the suction method.

Now, as we went out of World War I into the twenties, the evolution on both types of machine was extremely rapid, not only of machinery but the evolution of melting glass, the [fol. 463] improvement in furnaces, in the mixing and handling of batch; the control of temperatures. In the case of the gob-fed equipment, that is, the Hartford feeder, there were rapid strides made in the development of a single feeder against what was originally termed the panel needle when they started. The Owens machine also came forward along that same time with evolutionary changes. The type machine, I think, that—well, it expresses itself in two terms—suction and gob-fed. I know the gob end of the business. I have never operated an Owens machine.

In operating the gob machinery, this is done in initial instances through Lynch machinery and Miller machines. That is, through the late 1900s and early twenties. Later on, in the late twenties or probably early thirties, I could

be wrong a year or two, Hartford Empire developed what is known as the IS machine. In the case of our own company we moved from the Miller and JP types into the IS machinery.

The Court: Have you finished, sir?

What have been the developments since the thirties? Have there been any startling developments since then, or [fol. 464] is that evolutionary process continuing?

The Witness: Oh, that evolutionary process is continuing, your Honor.

The Court: Continuing all the time?

The Witness: Continuing all the time, yes, sir. Each year has brought some new change and advancement in these machines.

The Court: And I would suppose that during the evolutionary process both quality and diversification of the glass that you are able to produce and the purposes for which it is been able to be used have been improved and enlarged?

The Witness: Very decidedly so, sir.

By Mr. McManus:

Q. Now, Mr. Fisher, you mentioned the Lynch machine. Was that machine designed primarily to make narrow neck, or was it designed primarily to make wide-mouth ware?

A. No, sir; it has been designed originally to make narrow-neck ware.

Q. And the Lynch machine you said was first developed about what time?

A. Well, I would guess sometime from 1915 on. The exact [fol. 465] date I don't carry in my memory.

Q. And over the years the Lynch machine has put improvements on it and—

A. Yes, sir. The Lynch, original Lynch machine, carried characteristics like the Lynch LA, the LAS, the L. That drew—in the evolution they were discarded and the Lynch 10 took its place sometime in the thirties, which was a higher production machine, but still a narrow-neck machine.

Q. Could the Lynch 10 make all the ranges of narrow-neck bottles, from the smallest to the largest?

A. Yes, through the different machine types they made.

Q. Were there several machine types made?

A. Or they would make everything except carboys, I think. They would make from the smallest item through to a gallon container.

Q. You said before the Lynch did not make wide-mouth?

A. Mr. McManus, it was not designed as a wide-mouth machine. It has been used for wide-mouth. We have made some wide-mouth on it when we were forced to. It did not make the quality of wide-mouth that our customers demanded. It made a more wavy piece of ware. The distribution wasn't as good and it wasn't as good a product such as was produced on the Miller machine or the Hartford IS.

Q. Now, the Miller machine was primarily what, a narrow-neck, or a wide-mouth?

A. Wide-mouth.

Q. And could the Miller machine be changed from making small ware to large ware?

A. Miller produced for the different range wares, if my memory serves me right, four different size machines, starting with their JPS, JPM, JP, and JPL, each one of those, the last letters signifying the type ware it made.

Q. From small to large?

A. That's right.

Q. The Hartford IS equipment, as we know it today, the modern equipment, is that limited to making either one type of ware, either wide-mouth or narrow-neck?

A. No, sir; it will make both types of ware.

Q. If you are manufacturing wide-mouth ware on a Hartford machine, small ware, can you make a range all the way up to the large ware on the Hartford machine?

[fol. 467] A. Yes.

Q. Of the wide-mouth type?

A. You can go up to gallons.

Q. If you are making narrow-neck, small narrow-neck bottles on the Hartford IS equipment, can you make up to gallons, narrow-neck gallons, on that equipment?

A. On the same machine?

Q. Yes, sir.

A. Yes, sir.

Q. Is it possible to go from making a gallon narrow-neck bottle on the Hartford IS machine to a gallon wide-mouth bottle on that machine?

A. Yes, sir.

Q. And have you ever had occasion, to your knowledge, to change one of your lines from making narrow-neck bottles on an IS equipment to wide-mouth bottles?

A. That is a standard procedure, Mr. McManus. As your type of orders change, one day you might be making narrow-neck ware, and the order which you have to fill the next day is a wide-mouth, and you change the equipment.

[fol. 468] Q. Now, could you tell me how long it takes your company to change from making wide mouth ware on an IS machine to narrow neck?

A. I think we are doing it now in three to four hours.

Now, as I understand it, there has been some testimony here that the IS equipment comes out in four sections?

A. Regularly, yes, sir. However, Mr. McManus, there are certain companies who use the machine in less than four sections, including our own company. At one time in the early 30's I had a one-section machine and it was used largely for experimental work.

Q. I see.

A. But the machine is designed so that you could build it up from one section, and originally they only went to four.

Q. How many sections are there now, Mr. Fisher?

A. Well, I think the evolution began in the last three or four years and it is going more and more to a six-section machine.

Q. And on a six-section machine does that mean you are making in effect six bottles at one time?

A. Yes, sir.

[fol. 469] Q. Would those six glass containers be all of the same type?

A. Normally, yes. It would be absolutely necessary as long as they are the same weight.

Q. But they would have to be the same weight?

A. They would have to be the same weight.

Q. And this is a gob-fed machine, would you call it?

A. Yes, sir.

Q. And this machine is fed from your furnace or tanks, is that correct?

A. This machine is fed from feeders which are built out from the front of your furnace.

Q. How does that feeder handle all six sections of the machine—is it rigid?

A. I don't know that I am good enough to describe it but I will try.

Q. Just describe it generally.

The Court: Mr. McManus, do you plan to have some sort of a diagram here?

Mr. McManus: Yes, I will. I believe this is about the last question that I have on the machine.

The Court: All right.

Mr. McManus: I do not want to go into too much detail [fol. 470] but I would like to get an answer to this question.

A. The six sections of the IS machine are stationary. The furnace is about 12 feet above the floor. Extending upwardly toward that furnace from each one of the sections are stationary troughs which come together in an arc right under the orifice where the glass is fed down. There is a scoop rotating on a backward and forward motion, timed with the machine, and a common scoop that delivers the gob to each one of the six troughs.

Q. You indicated that you have amber tanks for making brown glass at several of your plants?

A. Yes, sir.

Q. Do those tanks have to be separate from your flint glass? Are they separate tanks?

A. They are in the same building.

Q. Yes, but I meant—

A. But it is a tank in itself.

Q. The vat has to be separate?

A. Yes, sir, very decidedly.

Q. That would be true of any different colors that are made?

A. Yes, sir.

[fol. 471] Q. Mr. Fisher, you have indicated that you were engaged in the manufacture of closures for glass containers, is that correct?

A. That is right.

Q. And what type of closures do you make?

A. We make metal and plastic closures of a wide range for food processors and for other types of processors.

Q. Do you make the continuous thread type closure?

A. Yes, sir, we do.

Q. And the non-vacuum type?

A. The what?

Q. Non-vacuum type?

A. Yes, sir.

Q. Do you make vacuum closures?

A. Yes, sir, we do.

Q. Do you make the side-seal type?

A. We make the side-seal as well as the twist-off.

Q. Now do you make machinery for applying these vacuum closures to glass containers?

A. Yes, sir.

Q. Could you estimate your size in this industry; are you 1, 2, 3 or 4?

Mr. Hughes: Is this in the closure industry?

[fol. 472] Mr. McManus: In the vacuum closures.

A. I don't think I could estimate that today, sir, because I haven't seen any figures lately.

The Court: Would you say you were one of the first three or four?

The Witness: I would say, your Honor, yes.

Q. Now, how long has your company been engaged in the manufacture of steam type vacuum closures?

A. I would say since the Nineteen Hundreds—some time around 1920.

Q. And you have a plant where you manufacture your own closure machinery?

A. We have a plant where we design and build the pilot machines and later, after we know we are right, we place these in outside machine shops under contract.

Q. Now, do you sell or do you lease this equipment to your customers?

A. We lease most of them.

Q. And do you have a service organization?

A. Yes.

Q. That services your equipment.

A. Yes.

Q. Do you lease this equipment throughout the United States?

A. Yes, sir.

Q. Could you give me your opinion as to the difficulties that a company would encounter in attempting to enter into the manufacture of vacuum type closures?

Mr. Hughes: I object to the form of the question.

The Court: Sustained.

Q. What would be necessary for a company to enter into the manufacture of vacuum type closures and vacuum type closing machinery?

A. Well, that is a pretty complicated question.

Mr. Hughes: There are two questions in one, your Honor.

Mr. McManus: All right, let us first—

The Court: First of all, there are two questions in one, and second of all, I think you have got to define your terms a little better than that.

Nobody, I think, could answer that question, or, at least, I would be very much surprised if anybody could without having some idea as to what sort of business you were talking about.

Mr. McManus: What I am trying to elicit from this witness [fol. 474] is if it is difficult or easy to enter into the business of manufacturing vacuum closing machinery.

The Court: Do you mean on a commercially profitable basis representing 10 per cent of the current manufacturing in the country, or something like that?

Mr. McManus: Let us take that question.

Mr. Hughes: Your Honor, I do not want to be in the position of appearing to object to your Honor's question—

The Court: You can object to my question, Mr. Hughes. There is no reason why you cannot.

Mr. Hughes: It seems to me that to ask a man what it would cost to equip himself to take over 10 per cent of an industry is—

The Court: What do you suggest?

Mr. Hughes: Your Honor, I don't suggest anything.

The Court: I know you don't, but I wondered whether you have any suggestions.

Q. Let me ask you this: To your knowledge, Mr. Fisher, are there any patents outstanding which would prevent a newcomer from entering into the manufacture of vacuum closure equipment, that is, basic patents?

[fol. 475] Mr. Hughes: Your Honor, I would object to that.

The Court: I will sustain the objection to that question. If you want to ask the witness whether he knows the extent to which machinery of this character is covered by patents, I will permit you to explore that to a limited degree and see where we go from there, because I don't know, in the first place, anything about this machinery at the moment.

Do you have patents on the machines that you produce?

The Witness: Yes, sir.

The Court: And you lease them?

The Witness: Yes, sir, we lease them.

The Court: What are they like? Just briefly tell us how they operate.

The Witness: Your Honor, that is a pretty hard question. There are about 15 different models ranging from a one-chamber machine where it takes an individual jar and it is probably hand-operated and where a person will fill the jar, put the cap on it, and the belt coming down over it and then draws his vacuum.

The Court: Is that for home canning?

[fol. 476] The Witness: It could be used for home canning, but many small packers use it.

The Court: Yes.

The Witness: You go from that small unit to our larger unit which takes 16 jars at a time. So the complications between those two are very great.

The Court: What is the general method? I take it that with your larger machines that there is some sort of a filling device whereby the food, or whatever it is, gets into the jar.

The Witness: Your Honor, the first step in the line is that you have a washing machine. These jars are dumped out of the cartons onto a continuous belt and are washed. They proceed from there to an automatic filler that fills—

The Court: The washing is for sterilization, is it?

The Witness: To take out any carton dust or any foreign matter.

The Court: Yes.

The Witness: The second step is the filler that fills these very accurately with products which have just been cooked. It moves from there to the packing machine—and I will use the description of this one 16-jar capping machine of

[fol. 477] ours—and it will cap them probably at a rate of as high as 700 a minute. It proceeds from there to the re-tort where this is cooked and it goes from there to the labeling machine, and from the labeling machine into the carton.

The Court: All right, that gives me a fairly good idea of it. This is all done on a sort of an assembly line basis, is it?

The Witness: That is right, yes, sir.

The Court: And you have your own patents on these machines that you manufacture, is that right?

The Witness: That is right, sir.

The Court: And you lease the machines to your customers?

The Witness: That is right.

The Court: In other words, can anyone come to you and lease the machines?

The Witness: Yes, sir.

The Court: Of course they would have to pay for it.

The Witness: Yes, sir.

The Court: Now, take similar machines made by, let us say, Hazel-Atlas Glass Company. Do you know whether those machines are different from yours?

[fol. 478] The Witness: Your Honor, I don't know whether Hazel-Atlas as such have any of those machines. There is a closure division.

The Court: In the closure division of Hazel-Atlas.

The Witness: Their machines are different than ours.

The Court: They are different?

The Witness: They are a straight line variety. Ours are the rotary variety.

The Court: Do you know whether they have patents on their machines?

The Witness: I am pretty sure they have, sir.

The Court: You are pretty sure?

The Witness: Yes, sir.

The Court: And they in turn lease their machines in competition, I presume, with your machines?

The Witness: Yes, sir.

By Mr. McManus:

Q. Would you mind, if this is not a trade secret, telling me what the cost to you is of your largest machine, what it costs to manufacture?

A. Why, Mr. McManus, I would say that the machines after they knocked down would cost about \$25,000.

[fol. 479] Mr. Hughes: Your Honor, may I inquire what kind of closing machines the witness is referring to?

The Court: The 16-cycle machines.

Mr. McManus: Of the vacuum type.

The Court: The vacuum type 16-cycle machine; is that right?

The Witness: That's right.

The Court: You said that you lease these machines to your customers.

Mr. Fisher, I take it that your company manufactures those machines itself; does it?

The Witness: That is right. We have engineered and designed the machines but we may not necessarily have built the machines. We may have contracted the building, but when it is finished, we bring it back into our shop, check it over, and make sure that it is right and then we ship it to our customers.

Q. Do you install these machines in your customers' plants?

A. Yes, I think largely so, especially if it is a new installation. If it is going in as a repair installation, let us say, they may install it themselves.

[fol. 480] Q. But on a new installation you install it?

A. We want to be sure that everything is set up so that everything we can do will show to our advantage and get a good start.

Q. And this equipment that you said you lease, there is no other labor cost—is there any other cost for putting the machinery into the customer's plant but just the machine?

A. Oh, Mr. McManus, I wouldn't say that. I think that there are other charges that go along with it; for instance, extending customers' conveyors and patching up things that are not properly part of the machine and which they ask us to perform that service.

The Court: Then, of course, there is a sales cost, too.

The Witness: That is right.

Mr. McManus: Excuse me, what was that, your Honor?

The Court: There is the sales cost.

Mr. McManus: That would be for the caps, is that right?

The Court: No.

I take it, Mr. Fisher, you make some effort to promote [fol. 481] the leasing of these machines, do you not?

The Witness: Well, sure, we try to promote those.

The Court: Do you have salesmen that go out?

The Witness: That's right, but the same container salesman or package salesman that sells the glass closure will advocate the use of our machines.

The Court: And if he does that I presume that you may then send out to a new customer some sort of sales engineer to set the situation up?

The Witness: That is right, sir, what we call a service man.

The Court: A service man?

The Witness: A service engineer.

Q. I think you testified before that the leasing of these machines is customary throughout the industry, that is, the leasing of the vacuum type of closing machine?

A. That is right.

Q. And you say that you have salesmen for these machines?

A. Not for the machines as such. The man who sells the package, the bottle, the package salesman, is also in charge [fol. 482] of the selling of the machinery.

The Court: In other words, he sells containers, enclosures and machines?

The Witness: That is right.

The Court: In other words, it is your line that he is selling?

The Witness: That's right.

Q. Does this salesman recommend that a purchaser should use the complete unit, the machines, closures and glass containers?

Mr. Hughes: Your Honor, I object to the form of the

question. The testimony has been that there is a leasing arrangement and now he is talking about selling.

The Court: I think we know what he means.

In other words, you are thinking about trying to sell a package, is that right?

Mr. McManus: That is right.

The Court: To sell the package which consists of containers sold, closures sold, and machinery leased, is that right?

Mr. McManus: That is right.

The Court: Now, what is the question?

Q. Do your salesmen attempt to lease your machinery [fol. 483] and sell your caps and your glass containers as one unit?

A. Well, we first try to sell the containers and the closures, and if they succeed in that we are pretty sure that the machinery will follow.

Q. Why do you say that, Mr. Fisher?

A. Because it has been designed for our closures.

Q. The machine has been designed for your closures?

A. Yes, but again, let me state to you, if we cannot sell the whole package, we will sell any part of it.

Q. I understand. Now, does your company sell corrugated containers?

A: Do we sell corrugated containers?

Q. Yes.

A. No, sir, we do not. We sell them as an integral part of the gross package, but we do not sell corrugated containers as such.

Q. Do you produce your own corrugated containers?

A. We have one pilot plant which we use for that that we produce containers in, but for all the rest of the plants, using what information we get out of this plant, we know that we purchase it at the right price. We purchase all of the outer containers; we manufacture the inner parts of the containers.

[fol. 484] Q. Can you estimate in figuring out the cost, what is the most important element of cost in producing your glass containers?

A: Well, labor is the highest cost, paper follows second, and freight probably third.

The Court: Then the raw materials and things of that nature follow third and fourth or in some order after that?

The Witness: Yes, sir.

Q. Can you tell me what your purchases of corrugated shipping containers were for the year 1959 in dollar figures, or do you object to that if it is a trade secret?

A. I think I would rather not, Mr. McManus, please. I will tell you what the cost is, that is, the per cent.

Q. Approximately what per cent is it?

A. I would say that our cost is about 17 per cent.

Q. 17 per cent of the sales price of the glass containers?

A. Of the sales dollar.

Q. That is, of course, averaged out over the whole range? [fol. 485] A. Yes, that's right.

Q. Of course, if it is a more expensive container the percentage might be less and for a cheaper container the percentage might be more?

A. Usually the large items have a greater container cost than the smaller items do.

Q. Can you tell me to your knowledge what glass container manufacturers have their own facilities for manufacturing shipping containers?

A. Yes, sir. Continental—

Mr. Hughes: I object to that. What is the relevance of this?

The Court: I will take it, Mr. Hughes.

Q. Would you like that question read back?

A. Yes, I would like it.

The Court: All right, read it back.

(Question read.)

A. I would think that there are only two, Owens-Illinois Glass Company and Continental Can Company. I am speaking now of the ones that are in the glass business.

Mr. McManus: Your Honor, could we take a short mid-morning recess now?

The Court: All right, Mr. McManus.

(Short recess.)

[fol. 486] The Court: All right, Mr. McManus.

Mr. McManus: I am finished with the direct examination.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Fisher, when you were mentioning your cost, you did not mention the item of fuel; is that a significant item of cost?

A. Sure. If you wanted to lump all your raw materials together, fuel is one of your materials. I gave the wrong—I gave the individual items about the way they ran, which you use.

Q. Mr. Fisher, is competition in the glass container industry keen and vigorous?

A. I didn't get that.

Q. Is competition in the glass container industry keen and vigorous?

A. I would say very keen and vigorous.

Q. Now, you make glass containers, and you also make closures; isn't that correct?

A. That is correct, sir.

Q. Do you sell glass containers without closures?

A. Yes, sir.

Q. And you sell closures without glass containers?

[fol. 487] A. Yes, sir.

Q. Would you say that many of your glass container customers have other sources of supply?

A. Yes, I think that is a fair statement.

Q. On what basis do you sell glass containers, that is, f.o.b. factory, as the delivery price, what is it?

A. Delivered.

Q. Delivered price?

A. Yes.

Q. Do you equalize freight with any can manufacturing plants?

A. None that I know of, sir. I don't think we do.

Q. The important raw materials in the manufacture of glass containers are sand, lime and soda ash, are they not?

A. That's right, sir.

Q. Are those materials in plentiful supply in the United States?

A. Yes.

By the Court:

Q. Where do they mostly come from, Mr. Fisher?
[fol. 488] A. Sand comes from Pennsylvania, Illinois, Southern Michigan and California. Soda ash comes from New York State, Ohio, Detroit, Wyoming, and the West Coast.

Q. Is soda ash, is that a manufactured product or is it a natural product?

A. No, most of it is manufactured.

Q. Most of it is manufactured?

A. Soda ash from Wyoming, your Honor, is a mined product.

Q. I see.

A. And pulverized.

Q. And the lime, where does the lime come from? Is that out of limestone?

A. Yes, sir, wherever there is limestone.

Q. And limestone is in very plentiful supply in various sections, is it not?

A. Yes, sir.

By Mr. Hughes:

Q. You testified that you made opal glass at one of your plants; is that correct?

A. That is correct, sir.

[fol. 489] Q. Could you, if you desired to do so, make opal glass at any of your other plants with your existing facilities?

A. You show me where to get the business; we will make it.

The Court: Somehow I doubt Mr. Hughes is going to do that for you.

Q. You have referred to certain of your closing machines that cost about \$25,000; do you remember that?

A. The machine?

Q. Yes.

A. Yes, sir.

Q. Could you tell us about how many of those you have under lease?

Mr. McManus: Your Honor, I would like to object in the event that that is a trade secret.

The Court: Well, if—

Q. Do you regard it as a trade secret?

A. Yes.

Mr. Hughes: I won't press the question.

The Witness: I'd rather not answer.

By the Court:

Q. Let me ask you this: what is your total volume of [fol. 490] sales? I think the figure used in the industry is net sales, which apparently more or less corresponds to what I was thinking of as gross sales, but what is your overall volume?

A. Our net sales last year, your Honor, was \$142,000,000.

Q. 142,000,000?

A. Of all products.

Q. Is there any breakdown of that that you feel you could conscientiously give us without disclosing any secrets of your company? I mean, how much was for, let's say, containers, how much was for caps, and how much was for machinery?

A. Well, we have never published those figures.

Q. You never published those figures?

A. No, sir.

The Court: I won't press it.

The Witness: All right, sir.

By Mr. Hughes:

Q. Well, Mr. Fisher, your business and your sales are really derived from two main sources, are they not? That is, your glass container business, in which I include the closures, and your housewares; isn't that correct?

[fol. 491] A. That is correct, sir.

Q. And would you be willing to say that the tableware

division accounts for roughly half of your total sales volume?

A. I would rather not state, Mr. Hughes.

Q. In any event, I think you have told his Honor that the glass container part of your business ranks second in the industry; is that correct?

A. I think that is the rating that is given. I didn't give it that rating.

Q. Well, is that your understanding?

A. I would think it is about right.

Q. And you have told us that you manufacture and sell these metal and plastic caps and closures; is that right?

A. That's correct, sir.

Q. And you lease the closing machines?

A. Correct, sir.

Q. Apart from crown caps you make a complete line of closures; is that correct?

A. I think we make a pretty complete line.

The Court: You don't make crown caps?

The Witness: We do not make crowns.

[Vol. 492] Q. Do you manufacture beer bottles?

A. Do we manufacture? Yes, sir.

Q. Yes, but not the crowns for them?

A. Mr. Hughes, we have manufactured crowns in the past, but we are not doing so now.

Q. Yes. No crowns of any kind?

A. Not to my knowledge, no, sir.

Q. And your closures include both the vacuum and the non-vacuum types; is that correct?

A. That is correct, sir.

Q. And both metal and plastic?

A. Yes, sir.

Q. And in the vacuum do you have both the side seal and the twist-off type?

A. Yes, sir.

Q. Now, your sales have been growing steadily, haven't they, over the years, the volume of your sales, from year to year?

A. Well, I certainly would hope so.

Q. And you know so, don't you?

A. Well, with the growth of the country and the growth

of the industry I think we have been keeping pace with it.
[fol. 493] Q. In 1950 do you recall that your sales were about \$83,700,000? Do you happen to recall that figure?

A. I don't recall, no.

Q. Do you recall that last year your sales were about \$141,000,000?

A. That's right, sir.

Q. Do you recall whether your net income in 1950 was approximately \$5,785,000?

A. I would rather not answer that without actually seeing it, Mr. Hughes.

Q. Yes.

A. You have the statement, haven't you?

Q. Yes. But in any event, in 1959 your earnings were about \$8,260,000; is that right?

A. How much?

Q. About \$8,260,000?

A. Well, what does the statement state?

The Court: Mr. Hughes, if you have got the statement—

A. (Continuing) I am not going to go on memory.

Q. No.

A. You have my published statement.

Q. Yes. Well, now, Mr. Fisher, I show you—

[fol. 494] Mr. McManus: Your Honor, we are willing to stipulate that those are, what, the 10K reports?

Mr. Hughes: Yes.

Mr. McManus: To the Securities and Exchange Commission of the Anchor Hocking Glass Company.

Mr. Hughes: For the years 1955 through 1959?

Mr. McManus: That is correct, your Honor.

The Court: All right.

Mr. Hughes: Well, your Honor, I have no desire to offer the entire document, but I would like to offer in evidence the statement of income and earned surplus in each one of those 10Ks for each one of those years.

The Court: All right.

Mr. Hughes: And I will just tear them out of this.

The Court: That is 1955-1959, inclusive; is that right?

Mr. Hughes: That is correct, your Honor.

The Court: Any objection to those going in?

Mr. McManus: No, sir, your Honor. The only thing, if Mr. Hughes would keep the rest of the document available, [fol. 495] so that—

The Court: I am sure he will keep the rest of the document available.

Mr. McManus:—so we can take a look at them. I looked at it once, but not in detail.

The Court: We will mark them as a single exhibit, I should think.

Mr. Hughes: Yes, sir.

(Defendants' Exhibit D-1 through D-5, inclusive, received in evidence.)

Mr. Hughes: Your Honor, I won't take the time now, but at some break I would like to call your attention to some of these figures.

The Court: All right.

By Mr. Hughes:

Q. In recent years have you made capital expenditures for plant expansion and modernization?

A. We have a regular program of modernization, not just in recent years, but going back for 20 years.

Q. Yes. And how many glass container plants do you have in the United States?

A. Seven.

Q. In 1958 you completed a fully automatic batch plant at Salem, New Jersey?

A. What?

[fol. 496] Q. In Salem, New Jersey, you completed a new plant at Salem, New Jersey?

A. Not a plant, no, sir. We put in a batching department.

Q. A batching department in an existing plant?

A. Storage plant, storage plant for sand, soda and lime.

Q. And you constructed additional warehouse facilities in Connellsville in 1958?

A. Well, we did in '56 and '58.

Q. And in 1958 did you commence an extensive program of plant revision and modernization of production facilities—

A. In 1945, sir—

Q. No. Well, just let me finish my question. In 1958 did you commence an extensive program of plant revision and modernization of production facilities at the Baltimore, Maryland, plant of your Carr-Lowrey subsidiary?

A. I don't think so. I think we started that five years before that.

Q. Well, did you complete it, in any event, around—

A. We completed a warehouse in '58.

[fol. 497] Q. And did you complete the work that you were doing at the Baltimore, Maryland, plant?

A. It isn't—it still isn't completed.

Q. Still not completed?

A. It is a continuing thing.

Q. Yes. Can you tell us approximately what a one-cycle closing machine would cost?

A. You mean a one-jar unit?

Q. Yes.

A. I am going to have to guess, Mr. Hughes.

Q. Do you have any approximation of the figure in your mind?

A. I would say \$500, and that is purely a guess.

The Court: Would that be a machine operated by hand?

The Witness: By hand, yes.

Q. You stated that the Lynch equipment was originally designed to make narrow-neck glass containers; do you recall that? Do you recall your testimony to that effect?

A. Yes.

Q. Would you say that that kind of machinery was as efficient in speed and cost of manufacture as the IS equipment?

[fol. 498] A. Would you restate your question, Mr. Hughes?

Q. Would you say that that Lynch equipment, which was designed originally to make narrow-neck glass containers, was as efficient in speed and in cost of manufacture as IS equipment?

A. No, sir.

Q. Was this true in the 1940s and in the 1930s?

A. Well, I think it's been true that the IS machine was a higher production unit than the Lynch machine.

Q. And you said that the Miller equipment was originally designed to make wide-mouth glass containers?

A. Correct, sir.

Q. Would you say that that was as efficient in speed and cost of manufacture as the IS equipment?

A. I don't know that one. I would guess the Miller machine would come nearer meeting a competitive cost with IS on wide-mouth than the Lynch did.

Q. You said you switched from Lynch & Miller to the IS equipment in the early 1930s; do you recall that?

A. That we did.

[fol. 499] Q. What prompted you to make the switch?

A. Because we thought the IS machine was a better machine.

Q. When you referred to the Hazel-Atlas vacuum closing machine, as I think you did—

A. I didn't refer to that, sir.

Q. Well, you were referring to the White Cap Division of Continental, were you not, when you made that reference?

A. That's right.

Q. Do you know whether Ball Brothers makes corrugated cartons for shipping?

A. I do not know, sir. I knew at one time that they owned a paper operation, and subsequently I thought they had disposed of it. I am not sure. They may.

Q. Mr. Fisher, can Anchor Hocking Company get more for its glass containers than Owens-Illinois can for its glass containers?

A. Wish we could.

Q. And Owens-Illinois can't get more money for its glass containers than Anchor Hocking, can it?

A. I can't answer for Owens.

Q. Not for very long, anyway.

A. What is that?

[fol. 500] Q. Not for very long, I say.

A. I couldn't answer that because I don't know it for a fact. I got my opinion.

Q. What is your opinion?

A. (No response.)

Q. Would you prefer not to go into it?

A. I prefer not to say.

Q. All right. Where the price of a plastic container for a particular end use, such as suntan lotion—let's take suntan lotion—is higher than the Owens-Illinois price of a glass

container for the same end use, would Anchor Hocking price its glass container at the higher plastic container price or at the lower glass container price?

A. I am not familiar, sir, with the plastic container prices. Therefore, I am unable to answer your question intelligently.

Q. Well, I want you to assume for purposes of the question that the plastic container price is higher, and on that assumption I ask you whether Anchor Hocking would price its glass container at the higher plastic container price or at the lower glass container price of Owens-Illinois?

[fol. 501] Mr. McManus: Your Honor, I am going to object. I think that question is so conjectural I am not sure that this witness could possible answer it.

The Court: Well, if the witness can answer it, he can answer it. If he can't answer it, he will tell us.

A. Mr. Hughes, I can't answer it because we are not in the plastic business. I suppose we have lost some business to plastic. There are other members of the industry who are in the plastic business.

Q. But the price that you watch, the price that you watch primarily, is the price of the other manufacturers of glass containers; is that correct?

A. Why, decidedly so.

Mr. Hughes: Excuse me just one moment.

No further questions.

The Court: All right, anything further, Mr. McManus?

Mr. McManus: Just one, your Honor.

Redirect examination.

By Mr. McManus:

Q. Mr. Fisher, to your knowledge, are vacuum closures used for enclosing glass containers for food?

[fol. 502] A. I would think that 90 per cent of the need would be in food.

Mr. McManus: Thank you, Mr. Fisher.

Mr. Hughes: No further questions.

The Court: All right, thank you, Mr. Fisher.

(Witness excused.)

Mr. Hughes: Your Honor, before the next witness is called, might I just briefly call your Honor's attention to these figures?

The Court: Yes.

Mr. Hughes: For the year ended December 31,—

Mr. Greenberg: Could you wait just a moment for Mr. McManus to come back?

The Court: You can deputize for Mr. McManus while these figures go in.

Mr. Greenberg: Very well.

Mr. Hughes: For the year ended December 31, 1955, Anchor Hocking sales—and I am just giving them in round figures—were \$113,787,000. In 1956 they were \$120,000,000. In 1957 they were \$125,000,000. In 1958 they were \$132,800,000 and in 1959 they were \$141,000,000.

The net income for the year 1955 was \$6,130,000; for the year 1956, \$6,200,000; for the year 1957, \$6,900,000; for the [fol. 503] year 1958, \$7,700,000, and for the year 1959, \$8,264,000—all after taxes.

Mr. Greenberg: Your Honor, may the Government make just one comment along that line?

The Court: Yes.

Mr. Greenberg: I would just like to point out that the gross national product of this country has risen in that period of time; that the debt has risen in that period of time and so has the per capita income of persons and corporations, and we believe that type of evidence is wholly irrelevant unless connected up with something more meaningful.

The Court: Well, it may be, it may be connected at some point.

Mr. Hughes: It seems to me that Mr. Greenberg has suddenly become both an economist as well as a lawyer.

Mr. Greenberg: I deny that.

The Government calls Mr. Green to the stand.

[fol. 504] WILLIAM J. GREEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. In Rye, New York.

Q. Pardon?

A. Rye, New York.

Q. Are you employed by the Thatcher Glass Company?

A. Right.

The Court: By what glass company?

Mr. Greenberg: Thatcher, sir, T-h-a-t-c-h-e-r.

The Court: Thatcher.

Mr. Greenberg: Yes.

Q. Have you been president of the company since 1957?

A. Correct.

Q. And have you been executive vice-president of the company since 1954?

A. To 1957, also.

Q. Would you describe your work, duties and responsibilities in each of these various positions?

By the Court: Well, I don't think we need a description [fol. 505] of the duties of the president of the company, nor of the executive vice-president. I think I can imagine pretty well what those gentlemen do.

Mr. Greenberg: Then I will certainly dispense with the question.

Q. And your company has offered since 1954, in your experience, wide-mouth and narrow-neck containers for food products?

A. Correct.

Q. Do you know, sir, whether these containers have been generally used for products stored on grocery and institution shelves for long periods of time?

A. They have.

Q. They have, sir; correct?

A. Yes.

Q. Has this, from your experience, been generally true for the industry's food glass containers?

A. Yes.

By the Court:

Q. You manufacture a full line of glass products, Mr. Green, I mean glass container products?

A. In your term of reference, we manufacture a full line of glass containers, with the exception of pharmaceuticals and toiletries.

[fol. 506] Q. And what is your gross volume?

A. \$50,000,000 last year.

By Mr. Greenburg:

Q. Sir, would you give us some illustrations of the foods which have been used or which have used the hermetic properties of glass for long-shelf life?

A. Baby foods, fruits and vegetables.

Q. Is coffee another one?

A. Coffee.

Q. Both instant and ground?

A. Yes.

Q. And there are many, many others, sir; is that correct?

A. Yes.

Q. Sir, has there been only one, only one other type of hermetic container offered to food processors in these areas for long-shelf life?

A. If we define hermetically sealed as airtight, there would technically, I suppose, be only one other container.

Q. And what is that container, sir?

A. Metal cans.

Q. Would you characterize for us the can companies' activities in the food areas you just described and illustrate [fol. 507]?

The Court: Wait a minute.

Mr. Hughes: Can companies, did you say? You said "can"; do you mean "can"?

Mr. Greenberg: That is just what I meant, metal can companies.

The Court: Well, you want him to characterize? What do you mean by characterizing, Mr. Greenberg?

Mr. Greenberg: I will withdraw the question.

The Court: Try and reframe it. It doesn't mean anything to me the way it is now.

Mr. Greenberg: All right, I will withdraw the question.

Q. Changing the direction of our conversation, sir, for the moment, has Thatcher had a research laboratory since 1954?

A. Yes.

Q. And would you describe the activities they have engaged in since that time?

A. Well, broadly, we do—

Q. Could you raise your voice, sir?

A. Broadly speaking, we engage in our research laboratory in both applied and basic research, and in our laboratory, controls of raw materials and products.

[fol. 508] Q. Now, you used the terms "applied" and basic research." Are they different?

A. Yes.

Q. Would you explain the difference?

A. Well,—

The Court: Now, Mr. Greenberg, do I have to be told the difference between applied and basic research?

Mr. Greenberg: I would assume not.

The Court: I should hope not by this time. You know, if you give me credit for just a little intelligence it is very helpful and we can proceed from there and go on, so that I know a little something about something, and then we can go on from there.

Mr. Greenberg: Well, I say this especially to the Court, that it was merely foundation testimony for light weighting, testimony of that nature.

The Court: All right.

Q. Mr. Witness, would you tell us about your light-weighting experience work?

A. Well, over the years, as our machinery and equipment processors have become refined, we have been able to, as an industry and also as a company, to successfully reduce the [fol. 509] weight of glass containers without sacrificing any inherent strength.

Q. And what is the reason for reducing the weight, freight savings, savings in cost? What is it?

A. Well, the obvious ones would be reduction of amount of raw material and fuel and also freight.

Q. Does the research laboratory carry on experiments with coatings to prevent breakage and abrasions?

A. Yes.

Q. Can you give us a very brief description of what that is all about?

A. Well, generally speaking, coatings are applied in the glass container industry to protect the pristine condition of the bottle from the time it is manufactured until it is utilized by the processor.

Q. And is it also designed to prevent abrasions, the coatings I am talking about, abrasions on the processing line?

A. No, because in—again, generally speaking, the coatings are removed before the glass containers are filled.

Q. Aren't there also experiments in coatings, various [fol. 510] types of coatings, sulphur and otherwise, which are designed to be put on the glass container, remain there for the purpose of preventing abrasions on the processing line?

A. In some instances, that is correct.

By the Court:

Q. What is the nature of the coatings, some sort of film that is put on?

A. Well, sir, we have coated bottles for 35 years. There is nothing new about it. You can coat a bottle with a fume or, for example, a sulphur fume, which increases its inherent strength, and in the latter years we have used silicones and stearate-based materials to perform the same function, depending upon the requirements of the packer. If you are going to put nails in a glass jar, he doesn't need to wash it out. If you are going to put something else in it, then in order to conform to pure food and drug laws, among other things, conditions are somewhat different.

By Mr. Greenberg:

Q. Has Thatcher had an industrial engineering group since 1954?

A. Yes.

Q. What kind of work do they do?

A. Well, generally speaking, their function is to improve [fol. 511] the technology of machinery, equipment of our own processing.

Q. When you say "processing," you mean manufacturing glass containers?

A. Manufacturing.

Q. Right. Has Thatcher had a customer advice department since 1954?

A. Yes.

Q. Will you describe the work they have done?

A. Well, they are primarily service people who help our customers in any way possible to properly utilize our product, who make regular calls to keep abreast of the customers' equipment, machinery, or any changes that might affect our glass containers, and they handle complaints on the rare occasions that we have them.

Q. Would they also aid processors in setting up new glass lines if they wanted to?

A. If we were asked to do that.

Q. You would give technical advice?

A. Yes.

Q. Do you have a quality control department in the consumer service department, as well?

[fol. 512] A. Yes.

Q. What do they do?

A. Well, we have a quality control laboratory in each of our factories, whose basic function is to see that the glass that we produce is correct, made properly and to the specifications of the customer before it gets out of the plant.

The Court: In other words, that is in effect product testing.

The Witness: Yes.

Q. Sir, does your company have a packaging laboratory?

A. Yes.

Q. Describe the work they do.

A. Well, they are primarily concerned with development of better cartons, which will conform with the customer's requirements at minimum expense.

Q. Sir, from 1954 to the present, have there been any other companies which offer all these services to its customers?

A. Yes.

Q. And would you list all of those companies, sir?

A. Well, I think that is a broad question. I don't know that each of these companies has every facet of these things [fol. 513] you have been through, but I should think, broadly speaking, Owens-Illinois, Anchor Hocking, Hazel-Atlas, Ball Brothers, possibly Armstrong Glass Container would have similar and almost as complete or perhaps more complete service.

Q. And those are all the ones you can recall, sir?

A. Yes, I should think that would cover it.

Q. That is the list; is that correct, sir?

A. Yes.

The Court: Well, now, Mr. Greenberg, he can't be expected to go beyond the statement he just made. He has told us all he knew who had comparable facilities. Maybe there are others. He doesn't exclude the possibility that there may be others.

Do you, Mr. Witness?

The Witness: No.

[fol. 514] Q. Sir, from your experience in the industry, have you learned of any others or do you recall any others?

A. I have listed those that I can think of. I named the largest companies.

Q. Sir, does your company sell closures for glass containers?

A. Yes.

Q. What type of closures?

A. Our closure manufacturing is confined to plastics.

Q. Plastic?

A. Yes.

Q. What are they used for?

The Court: Are they screw top?

The Witness: Yes, sir. We make only polystyrene plastic.

Q. What are they used for?

A. Primarily liquorware.

Q. Liquorware, is that what you said?

A. Yes.

Q. Has your company been selling narrow neck bottles for catsup since 1954?

A. Yes, sir.

[fol. 515] Q. In your experience with Thatcher have aerosol cans been offered to your customers for this product?

A. Yes.

Q. How have you learned of this?

A. From trade journal advertisements and we have had reports from our sales force.

Mr. Greenberg: You may examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Green, do most of your customers for glass containers have more than one source of supply?

A. Yes.

Q. Do most of your customers for closures have more than one source of supply?

A. Yes.

Q. Would you say that competition in the glass container industry is keen and vigorous?

A. I certainly would.

Q. You do not quote prices to a specific customer for the purpose of meeting can prices, do you?

A. No.

Q. You do not equalize freight with any can plants, do you?

A. No, we do not.

[fol. 516] Q. The location of any can manufacturing plant or plants, does that have any relation to the location of your glass container plant?

A. If I understand you, are you asking me if we locate our plants or have that factor as a decision where our plant is located?

Q. Yes.

A. The answer is no.

The Court: By the way, how many plants do you have?

The Witness: We have five glass container plants.

The Court: Do you manufacture, besides glass containers, any other glass products such as tableware?

The Witness: Yes, we have one pressware plant.

Q. There is a McKee Division of your company?

A. Yes.

Q. What does that division make?

A. Pressware.

Q. Could you make glass containers with the facilities of your McKee Division if you chose to do so?

Mr. Greenberg: I am going to object to that question, your Honor, unless we have had a foundation and whether [fol. 517] they have tried to do so.

The Court: Overruled.

A. With certain modifications, we can and have made glass containers in that plant.

Q. Do you know, Mr. Green, if there is anything that would keep your company from going into the vacuum closure business if you chose to do so?

A. Presumably not, if we chose to do so.

The Court: Let me ask you this: Is there anything to stop you from going into the vacuum closing machinery business if you chose to do so?

The Witness: Depending on our ingenuity and amount of money, I think there is nothing to prevent us.

Q. Does the Hazel-Atlas Division of Continental offer their products to those glass container customers which you described in your direct examination?

A. I should think so, yes.

Q. I show you this document and ask if you can identify that as your annual report for the year 1959?

A. Yes, sir.

Mr. Hughes: I offer it in evidence.

The Court: There is no objection, I take it.

Mr. Greenberg: Are you offering the entire exhibit? [fol. 518] Mr. Hughes: Yes.

Mr. Greenberg: No objection.

(Received and marked Defendants' Exhibit E.)

Q. Do you make beer bottles?

A. Yes.

Q. And soft drink bottles?

A. Yes.

Q. Do you make crowns for either of that type of bottle?

A. No.

The Court: Any further cross?

Mr. Hughes: No, nothing more, your Honor.

The Court: Anything further, Mr. Greenberg?

Mr. Greenberg: I just have two questions.

The Court: Very good.

Redirect examination.

By Mr. Greenberg:

Q. Sir, since 1954 to what extent have you made glass containers in the McKee Division for commercial use?

A. In our McKee Division in Jeannette, Pennsylvania, I think we produced green glass containers for beverages and beer and some fruit juices there from about 1955 to 1957, perhaps two and a half or three years, at which time [fol. 519] we discontinued that operation.

Q. You discontinued the operation?

A. Yes.

Q. Just one more question:

You stated that at the present time you have five glass container plants?

A. Yes, five glass container plants.

Q. Where are they located?

A. Elmhurst, New York, Streator, Illinois, Lawrenceburg, Indiana, Tampa, Florida, and Saugus, California.

Mr. Greenberg: Thank you.

Mr. Hughes: No further questions.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: All right, gentlemen:

Mr. McManus: Your Honor, as I told you yesterday, the original witness that we had from this company was a Mr. Pollack, with whom we intended to cover a much broader area.

The Court: Mr. McManus, I think that all of the gentlemen in back of you cannot hear you. Will you talk a little louder?

Mr. McManus: Mr. Pollock covered a longer period of time in the glass container industry than Mr. Green and [fol. 520] we intended to have a much more extensive and lengthy examination. We find at this time that we do not have another witness scheduled, and what I wanted to know, your Honor, is—

The Court: You mean that you have no more for this morning or no more for the day?

Mr. McManus: We only had two scheduled for the day, your Honor. What I wanted to know was this, your Honor, in regard to documents. There have been certain documents which the defendants have indicated—not that they have indicated but they have stated that they will not object to them, and I was wondering if you could tell me how you would like for us to put those documents in the record.

The Court: Well, if there is no objection, I will direct the clerk to sit down with counsel and mark in evidence, with the appropriate numbers, any documents to which there is no objection. There is absolutely no reason for me to be present while that process is going on.

Mr. McManus: The other thing that I wanted to ask your Honor about was this:

Although, as we say, we had no one else scheduled, we believe that we will be able to have another witness after [fol. 521] lunch, and that will be Mr. Thomas of Bristol-Myers.

Mr. Greenberg: Your Honor, as we understand, Mr. Thomas desires to testify as soon as he can and will come down on a few hours' notice. Actually what happened here was that we had assumed—

The Court: Who is Mr. Thomas?

Mr. Greenberg: He is from Bristol-Myers. We had depended on the cross-examination of Dr. Ball, and we have had difficulty in shifting witnesses from next week back into this week.

Mr. McManus: That has been our problem, the fact that Dr. Ball was not cross-examined.

The Court: All right. Put Mr. Thomas on this afternoon.

We are going to have to accommodate this situation. The time of the Court is entirely too important to permit the wasting of any part of any day, if we can avoid wasting it.

What time do you think you can get Mr. Thomas here?

Mr. McManus: We will attempt to get him here by two o'clock.

The Court: All right.

Mr. McManus: It might be later—

[fol. 522] The Court: We will make it 2.15, and we will put on Mr. Thomas, and Mr. Hughes will do what cross-examining of him he can. If he requires further time, I will hear an application at that time.

Do you want to work on the documents between now and then?

Mr. McManus: Well, your Honor, I thought that we would have our luncheon recess and when we come back we would work on them.

The Court: I presume that you can work that out with the clerk and with your opponents, but the fact is that we now have an hour and three-quarters and I would think that some of that time could be put to good use.

If you want to do it after you complete the witness Thomas that is all right with me.

How long do you estimate that you will be on direct with Thomas?

Mr. McManus: It won't take over an hour.

The Court: Then we ought to be through with Mr. Thomas. I doubt if Mr. Hughes' cross-examination will run very much longer, but we will see.

Mr. Hughes: Your Honor, before you rise, we have that [fol. 523] exhibit in evidence and I don't know whether your Honor has had an opportunity to look through it.

The Court: All I wanted to do was thumb through it and get a general idea of the picture.

Mr. Hughes: There are a few things that I wanted to call your Honor's attention to:

The Court: All right, you may do that now. There is a page here showing a ten-year review. Is that what you wanted to call my attention to?

Mr. Hughes: Yes. I wanted to read these figures into the record: That in the year 1950 the sales were—

The Court: First read the sales and then the net income for each year.

Mr. Hughes: In 1950 the sales were \$18,800,000 and the net income was \$972,000.

In 1951 the sales were \$23,000,000 and the net income was \$1,097,000.

In 1952 the sales were \$27,700,000 and the net income was \$990,000.

In 1953 the sales were \$32,597,000 and the net income was \$1,246,000.

In 1954 the net sales were \$30,891,000 and the net income was \$1,391,000.

[fol. 524] In 1955 the net sales were \$36,640,000 and the net income was \$1,362,000.

In 1956 the net sales were \$39,000,000 and the net income was \$1,760,000.

In 1957 the net sales were \$42,000,000 and the net income was \$2,340,000.

In 1958 the net sales were \$42,970,000 and the net income was \$2,398,000.

In 1959 the net sales were \$49,860,000 and the net income was \$2,641,000.

There is one other item that I would like to call to your Honor's attention. This appears at page 3:

The year 1959 was significant for Thatcher Glass Manufacturing Company in three aspects: Financially, it was the best in our seventy-six year history, with sales and earnings rising to new peaks in spite of a costly labor dispute that occurred in the last quarter of the year. Secondly, in completing the Lawrenceburg, Indiana plant expansion and starting construction of a new plant in Tampa, Florida, we substantially increased our bottle-making capacity and, in turn, our earnings potential. Thirdly, we took a decisive step in the direction of broader diversification by acquiring two plastics enterprises, the Celon Company and Plastic Tube & Bottle, Inc., both within the packaging industry and supplementing our glass container business."

The Court: Very good. We will now take a recess until 2.15.

(Recess to 2.15 p.m.)

[fol. 534] STIPULATIONS OF DEFENDANT WITH REGARD TO DOCUMENTS PROPOSED TO BE OFFERED IN EVIDENCE BY PLAINTIFF

Subject to the qualifications and limitations contained herein, the defendant stipulates, as follows with respect to the proposed Government exhibits, which are referred to in each case by the number assigned to them by the Government.

Where applicable, the numbers assigned by the defendant to the documents at the time they were produced are given in parenthesis immediately following the assigned Government number.

G-400 (DP-2950)

This document was produced by the defendant from its files. It was prepared in 1954 by Dana Hill, then ~~Manager of Commercial Research Department of defendant~~ and was distributed to the persons named on the introductory sheet.

G-400A (DP-3282)

This document was produced by the defendant from its files. It was prepared on or about November 24, 1947 by R. S. Hatfield, then Assistant to the Vice President in charge of Sales of defendant. It was distributed to the addressee and to the persons indicated as recipients [fol. 535] of carbon copies.

G-401 (DP-3163)

This document was produced by the defendant from its files. It was prepared by the Commercial Research Department, a department of defendant, in or about April, 1949. The initials at the bottom of page iii are those of D. H. Walker, then Manager of Commercial Research of defendant. The data on numbered page 7

was provided by W. K. Neuman, then Products Sales Manager of defendant.

G-402 (DP-3164)

This document was produced by the defendant from its files. It was prepared on or about November 25, 1952 by the Commercial Research Department, a department of defendant.

G-403 (DP-2543)

This document was produced by the defendant from its files. It was prepared on or about May 18, 1956 by W. L. Tibbitts, then a Research Engineer in the Special Products section of defendant. It was prepared in the course of Mr. Tibbitt's employment.

G-404 (DP-2544)

This document was produced by the defendant from [fol. 536] its files. It was prepared in or about August, 1956 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to some persons within the defendant's organization.

G-405 (DP-2545)

This document was produced by the defendant from its files. This document, consisting of three separate letters or memoranda, was prepared in or about June, 1956, by R. D. Cleaves, then Products Sales Manager of defendant. The first two memoranda were distributed to some persons within defendant's organization. The letter comprising the last sheet of the exhibit was distributed to defendant's Division Managers of Sales and District Sales Managers.

G-405A (DP-2519)

This document was produced by the defendant from its files. It was prepared on or about November 21, 1956 by H. P. Lankelma, Jr., then Research Chemist "B", employed in the Special Products section of defendant.

It was prepared in the course of Mr. Lankelma's employment.

G-406 (DP-2970)

[fol. 537] This document was produced by the defendant from its files.

G-407 (DP-2969)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-408 (DP-2905)

This document was produced by the defendant from its files. It was prepared on or about July 21, 1955 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to persons within defendant's organization and was received by P. L. Brachle of defendant's Central Metal Division.

G-409 (DP-2961)

G-410 (DP-2898)

This document was produced by the defendant from its files. It was prepared on or about August 18, 1955 by R. D. Cleaves, then Products Sales Manager of defendant. It was distributed to members of defendant's Sales Department, including members of the Pacific Metal Division and Central Metal Division.

G-411 (DP-2520)

This document was produced by the defendant from [fol. 538] its files. It was prepared on or about June 15, 1955 by H. P. Lankelma, Jr., then Research Chemist "B", in the Special Products section of defendant and was revised on or about May 1, 1956 by him or by other employees of the defendant.

G-412 (DP-2974)

This document was produced by the defendant from its files. It was prepared on or about February 15, 1955,

by National Family Opinion, Inc., Toledo, Ohio, for defendant.

G-413 (DP-2949)

This document was produced by the defendant from its files. It was prepared in or about November or December, 1955.

G-414 (DP-2968)

This document was produced by the defendant from its files.

G-415 (DP-3158)

This document was produced by the defendant from its files. It was prepared in or about March or April, 1946, by the Market Analysis Department or by the Commercial Research Department of defendant.

G-415A (DP-3250)

This document was produced by the defendant from [fol. 539] its files. It was prepared by R. J. Breen, who was at one time an employee in the Commercial Research Department of defendant.

G-415B (DP-3253)

This document was produced by the defendant from its files. It was prepared on or about July 13, 1953 by L. C. Dudley, then Products Sales Manager of defendant.

G-415C (DP-3261)

This document was produced by the defendant from its files. It was prepared on or about February 10, 1947 by G. H. Muth, then a special assignments employee of defendant. It was distributed to the addressees, each of whom was then an officer or employee of defendant.

G-416 (DP-2934)

" This document was produced by the defendant from its files. It was prepared on or about May 3, 1946 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-417 (DP-2469)

This document was produced by the defendant from its files. It was prepared on or about July 15, 1953 by R. A. Larson, then employed in connection with pack- [fol. 540] age development for defendant.

G-418 (DP-2933)

This document was produced by the defendant from its files. It was prepared in or about October 1953 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-419 (DP-2931)

This document was produced by the defendant from its files. It was prepared on or about June 7, 1954 by S-D Surveys Incorporated, New York, New York for defendant.

G-419A-B-C (DP-2935)

These documents were produced from the files of the defendant as one document. This document was prepared on or about July 5, 1945 by the Market Analysis Department of defendant and by S. T. Frame, then Manager of Market Analysis of defendant. It was distributed to the addressees, each of whom was then an officer or employee of defendant and to the persons indicated to receive carbon copies, each of whom was then an employee of defendant.

G-420 (DP-2932)

This document was produced by the defendant from its files. It was prepared in or about February, 1954 [fol. 541] by S-D Surveys Incorporated for defendant.

G-421 (DP-2960)

This document was produced by the defendant from its files. It was prepared on or about January 21, 1955 by S. B. Smart, then Assistant Products Sales Manager of defendant and was received by the addressee, an employee of defendant.

G-421A (DP-3284)

This document was produced by the defendant from its files. It was prepared on or about August 13, 1953 by S. B. Smart, then Assistant Products Sales Manager of defendant and was received by the addressee, an employee of defendant.

G-422 (DP-591)

This document was produced by the defendant from its files. It was prepared by the defendant.

G-423 (DP-3132)

This document was produced by the defendant from its files. It was prepared on or about December 26, 1957 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. [fol. 542] It was prepared in the course of his employment.

G-424 (DP-3131)

This document was produced by the defendant from its files. It was prepared on or about December 26, 1957 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-425 (DP-2497)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1958 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-426 (DP-2908)

This document was produced by the defendant from its files. It was prepared on or about May 9, 1958, by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-427 (DP-2909)

[fol. 543] This document was produced by the defendant from its files. It was prepared on or about July 9, 1958 by P. B. Gottschall, then a Section Chief in the Metal Research & Development Division of defendant. It was prepared in the course of his employment.

G-429 (DP-2951)

This document was produced by the defendant from its files. It was prepared on or about January 19, 1954 by the Commercial Research Department of defendant and D. H. Walker, then an employee in that department. It was received by the addressee and the persons for whom carbon copies were indicated, all of whom were then employees of defendant.

G-430 (DP-2926)

This document was produced by the defendant from its files. It was prepared by the Sales Development Department of defendant.

G-431 (DP-3159)

This document was produced by the defendant from its files.

G-432 (DP-3166)

This document was produced by the defendant from its files. It was prepared by the Advertising and Sales [fol. 544] Promotion Department of the defendant.

G-433 (DP-3160)

This document was produced by the defendant from its files.

G-434 (DP-2945)

This document was produced by the defendant from its files. It was prepared on or about June 4, 1947 by G. H. Muth, then a special assignments employee of defendant.

G-435 (DP-2944)

This document was produced by the defendant from its files. It was prepared on or about June 10, 1947 by G. H. Muth, then a special assignments employee of defendant. It was received by the addressee and the persons for whom carbon copies were indicated, each of whom was then an employee of defendant.

G-436 (DP-2943)

This document was produced by the defendant from its files. It was prepared on or about August 7, 1947 by G. H. Muth, then a special assignments employee of defendant.

G-437 (DP-3157)

This document was produced by the defendant from [fol. 545] its files. It was prepared on or about August 20, 1948 and revised on or about October 1, 1948 by the Commercial Research Department of defendant.

G-438 (DP-2942)

This document was produced by the defendant from its files. It was prepared on or about June 30, 1949 by A. L. Whittier, then Supervisor of Industrial Analysis of the Commercial Research Department of defendant. It was distributed to District Sales Managers of defendant and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant.

G-439 (DP-2941)

This document was produced by the defendant from its files. It was prepared on or about July 11, 1949 by M. M. Dukehart, Jr., then a special assignments employee of defendant. It was distributed to defendant's District Sales Managers and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant. The material included in the schedules following page 1 of the document was assembled by the Commercial Research Department [fol. 546] of defendant on or about June 23, 1949.

G-439A (DP-3257)

This document was produced by the defendant from its files.

G-440 (DP-2940)

This document was produced by the defendant from its files. The first page of this document was prepared on or about October 31, 1952 by or for D. H. Walker, then Manager of Commercial Research of defendant. The material following the cover page was prepared on or about October 31, 1952 by the Commercial Research Department of defendant. The entire document was distributed to the addressee and to the persons whose names appear at the bottom of page 1, each of whom was then employees of defendant.

G-440A (DP-3278)

This document was produced by the defendant from its files. It was prepared on or about January 29, 1952 by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear on the bottom of page 3, each of whom was then employees of defendant. [fol. 547]

G-441 (DP-2963)

This document was produced by the defendant from its files. It was prepared on or about December 31, 1952

by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 6, each of whom was then an employee of defendant.

G-442 (DP-2938)

This document was produced by the defendant from its files. It was prepared in or about January 1954 by A. J. Wood & Company for defendant. The foregoing stipulation does not apply to the two loose, *undoubt* sheets.

G-443 (DP-2962)

This document was produced by the defendant from its files. It was prepared on or about August 19, 1954 by S. B. Smart, then Assistant Products Sales Manager of defendant and by W. D. Way, Jr., then a Market Analyst for defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 4, each of whom was then an employee of defendant.

[fol. 548] G-444 (DP-2937)

This document was produced by the defendant from its files. It was prepared in or about January, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-445 (DP-2936)

This document was produced by the defendant from its files. It was prepared on or about February 21, 1956 by the Commercial Research Department of defendant under the general supervision of Dana Hill, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear at the bottom of page 1, each of whom was then an employee of defendant.

G-446 (DP-2499)

This document was produced by the defendant from its files. It was prepared on or about December 5, 1957 by S. W. Drigot, then a Research Chemist of defendant and was prepared by him in the course of his employment.

G-447 (DP-2971)

This document was produced by the defendant from its files. It was prepared in or about October, 1958 by [fol. 549] Elmo Roper & Associates for defendant.

G-448 (DP-2560)

This document was produced by the defendant from its files. It was prepared on or about August 25, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

G-449 (DP-2561)

This document was produced by the defendant from its files. It was prepared on or about July 21, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant organization.

G-450 (DP-2562)

This document was produced by the defendant from its files. It was prepared on or about June 27, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

G-451 (DP-2563)

This document was produced by the defendant from its files. It was prepared on or about May 26, 1958 by the Sales Control Department of defendant. It was distributed to some persons within the defendant's organization.

[fol. 550] Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Commercial Research Department and/or Sales Control Department of defendant, and each was distributed to some persons within the defendant's organization:

- G-452 (DP-2564) April 25, 1958
- G-453 (DP-2565) March 31, 1958
- G-454 (DP-2566) February 28, 1958
- G-455 (DP-2567) February 24, 1958
- G-456 (DP-2568) January 22, 1958
- G-457 (DP-2569) December 19, 1957
- G-458 (DP-2570) December 10, 1957
- G-459 (DP-2571) October 29, 1957
- G-460 (DP-2572) September 18, 1957
- G-461 (DP-2573) August 29, 1957
- G-462 (DP-2574) July 19, 1957
- G-463 (DP-2575) June 26, 1957
- G-464 (DP-2576) May 23, 1957
- G-465 (DP-2577) April 26, 1957
- G-466 (DP-2578) March 25, 1957
- G-467 (DP-2559) September 22, 1958
- G-468 (DP-2558) October 23, 1958
- [fol. 551] G-469 (DP-2557) November 26, 1958
- G-470 (DP-2579) October 23, 1958
- G-471 (DP-2580) February 21, 1957
- G-472 (DP-2581) January 28, 1957
- G-473 (DP-2582) December 20, 1956
- G-474 (DP-2583) November 23, 1956
- G-475 (DP-2584) October 17, 1956
- G-476 (DP-2585) September 24, 1956
- G-477 (DP-2586) August 20, 1956
- G-478 (DP-2587) July 26, 1956
- G-479 (DP-2588) June 25, 1956
- G-480 (DP-2589) May 25, 1956
- G-481 (DP-2590) April 19, 1956
- G-482 (DP-2591) March 28, 1956
- G-483 (DP-2592) February 24, 1956
- G-484 (DP-2593) February 24, 1956
- G-485 (DP-2594) January 24, 1956

G-486 (DP-2595) December 21, 1955
 G-487 (DP-2596) November 22, 1955
 G-488 (DP-2597) October 17, 1955
 G-499 (DP-2598) September 21, 1955
 G-500 (DP-2599) August 19, 1955
 G-501 (DP-2600) July 26, 1955
 G-502 (DP-2601) June 23, 1955
 [fol. 552] G-503 (DP-2602) May 20, 1955
 G-504 (DP-2603) April 25, 1955
 G-505 (DP-2604) March 25, 1955
 G-506 (DP-2605) March 1, 1955
 G-507 (DP-2606) February 16, 1955
 G-508 (DP-2607) January 13, 1955
 G-509 (DP-2608) December 14, 1954
 G-510 (DP-2609) November 18, 1954
 G-511 (DP-2610) October 15, 1954
 G-512 (DP-2611) September 16, 1954
 G-513 (DP-2612) August 17, 1954
 G-514 (DP-2613) July 15, 1954
 G-515 (DP-2614) June 16, 1954
 G-516 (DP-2615) May 17, 1954
 G-517 (DP-2616) April 15, 1954
 G-518 (DP-2617) March 18, 1954
 G-519 (DP-2618) February 19, 1954
 G-520 (DP-2619) February 17, 1954
 G-521 (DP-2620) January 19, 1954
 G-522 (DP-2621) December 14, 1953
 G-523 (DP-2622) November 16, 1953
 G-524 (DP-2623) October 13, 1953
 G-525 (DP-2624) September 17, 1953
 [fol. 553] G-526 (DP-2625) August 28, 1953
 G-527 (DP-2626) July 15, 1953
 G-528 (DP-2627) June 15, 1953
 G-529 (DP-2628) May 15, 1953
 G-530 (DP-2629) April 16, 1953
 G-531 (DP-2630) March 18, 1953
 G-532 (DP-2631) February 13, 1953
 G-533 (DP-2632) January 20, 1953
 G-534 (DP-2633) December 16, 1952
 G-535 (DP-2634) November 17, 1952
 G-536 (DP-2635) October 17, 1952
 G-537 (DP-2636) September 16, 1952

G-538 (DP-2637) August 18, 1952

G-539 (DP-2638) July 17, 1952

Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Sales Analysis Department of defendant, and each was distributed to some persons within the defendant's organization:

G-540 (DP-2639) June 18, 1952

G-541 (DP-2640) May 28, 1952

G-542 (DP-2641) April 25, 1952

[fol. 554] G-543 (DP-2642) March 25, 1952

G-544 (DP-2643) February 26, 1952

G-545 (DP-2644) January 29, 1952

G-546 (DP-2645) December 20, 1951

G-547 (DP-2646) November 30, 1951

G-548 (DP-2647) October 23, 1951

G-549 (DP-2648) September 25, 1951

G-550 (DP-2649) August 27, 1951

G-551 (DP-2650) July 31, 1951

G-552 (DP-2651) June 29, 1951

G-553 (DP-2652) May 31, 1951

G-554 (DP-2653) May 1, 1951

G-555 (DP-2654) March 26, 1951

Each of the following documents was produced from the files of the defendant. Each of them was prepared on or about the date indicated below by the Commercial Research Department and/or Sales Analysis Department of defendant, and each was distributed to some persons within the defendant's organization:

G-556 (DP-2655) February 23, 1951

G-557 (DP-2656) January 25, 1951

G-558 (DP-2657) December 28, 1950

[fol. 555] G-559 (DP-2658) November 24, 1950

G-560 (DP-2659) October 25, 1950

G-561 (DP-2660) September 26, 1950

G-562 (DP-2661) August 21, 1950

G-563 (DP-2662) July 19, 1950

G-564 (DP-2663) June 16, 1950

G-565 (DP-2664) May 17, 1950

G-566 (DP-2665) April 21, 1950

G-567 (DP-2666) March 22, 1950
 G-568 (DP-2667) February 17, 1950
 G-569 (DP-2668) January 25, 1950
 G-570 (DP-2669) December 23, 1949
 G-571 (DP-2670) November 23, 1949
 G-572 (DP-2671) October 26, 1949
 G-573 (DP-2672) September 23, 1949
 G-574 (DP-2673) August 24, 1949
 G-575 (DP-2674) July 27, 1949
 G-576 (DP-2675) June 21, 1949
 G-577 (DP-2676) May 27, 1949
 G-578 (DP-2677) April 28, 1949
 G-579 (DP-2678) March 29, 1949
 G-580 (DP-2679) Undated
 G-581 (DP-2680) February 25, 1949
 [fol. 556] G-582 (DP-2681) January 21, 1949
 G-583 (DP-2682) December 17, 1948
 G-584 (DP-2683) November 17, 1948
 G-585 (DP-2684) October 21, 1948
 G-586 (DP-2685) September 23, 1948
 G-549 (DP-2686) August 11, 1948
 G-588 (DP-2687) July 9, 1948
 G-589 (DP-2688)

This document was produced by the defendant from its files. It was prepared on or about June 9, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed by L. E. Dake, then Manager of Commercial Research of defendant. It was distributed to persons named on page 1, each of whom was then an employee of defendant and to defendant's District Sales Managers, District Credit Managers and Product Sales Managers.

G-590 (DP-2689)

This document was produced by the defendant from its files. It was prepared on or about May 5, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed by L. E. Dake, then Manager of Commercial Research of defendant. It was distributed [fol. 557] to persons named on page 1, each of whom was then an employee of defendant and to de-

defendant's District Sales Managers, District Credit Managers and Product Sales Managers.

G-591 (DP-2690)

This document was produced by the defendant from its files. It was prepared on or about April 5, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant, and to defendant's District Sales Managers, District Credit Managers and Product Managers.

G-592 (DP-2691)

This document was produced by the defendant from its files. It was prepared on or about January 8, 1948 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

[fol. 558] G-593 (DP-2692)

This document was produced by the defendant from its files. It was prepared on or about December 10, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-594 (DP-2693)

This document was produced by the defendant from its files. It was prepared on or about November 5, 1947, by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to de-

defendant's District Sales Managers and District Credit Managers.

G-595 (DP-2694)

This document was produced by the defendant from its files. It was prepared on or about October 7, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-596 (DP-2695)

This document was produced by the defendant from its files. It was prepared on or about September 5, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's District Sales Managers and District Credit Managers.

G-597 (DP-2696)

This document was produced by the defendant from its files. It was prepared on or about August 6, 1947 by A. L. Whittier, then a Market Research Analyst of defendant and by G. H. Muth, then a special assignments employee of defendant. It was distributed to the persons whose names appear on page 3, each of whom was then an employee of defendant and to defendant's [fol. 560] District Sales Managers and District Credit Managers.

G-598 (DP-2697)

This document was produced by the defendant from its files. It was prepared on or about July 3, 1947 by A. L. Whittier, then a Market Research Analyst of defendant. It was distributed to the persons whose names

appear on page 3, each of whom was then an employee of defendant.

G-599 (DP-2698)

This document was produced by the defendant from its files. It was prepared on or about June 5, 1947 by A. L. Whittier, then a Market Research Analyst of defendant. It was distributed to the persons whose names appear on page 2, each of whom was then an employee of defendant.

G-600 (DP-572)

This document was produced by the defendant from its files. It was prepared by the defendant.

G-600A (DP-306)

This document was produced by the defendant from its files. It was prepared in or about June, 1955 by or for C. H. Buckley, then Products Sales Manager of defendant.

[fol. 561] G-600B (DP-2930)

This document was produced by the defendant from its files. It was prepared on or about May 26, 1956, by D. H. Walker, then Manager of Commercial Research of defendant. It was distributed to the addressee and to the persons whose names appear on page 3, each of whom was then an employee of defendant.

G-601 (DP-2929)

This document was produced by the defendant from its files. It was prepared on or about August 7, 1953 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons whose names appear on page 3, each of whom was then an employee of defendant.

G-602 (DP-2928)

This document was produced by the defendant from its files. The first two pages of this document were prepared on or about December 11, 1953 by D. H. Walker, then Manager of Commercial Research of defendant and distributed to the addressee and to the persons whose names appear on page 2; each of whom was then an employee of the defendant.

[fol. 562] G-603 (DP-2927)

This document was produced by the defendant from its files. It was prepared on or about May 24, 1954 by the Commercial Research Department of defendant.

G-604 (DP-2958)

☞ This document was produced by the defendant from its files. It was prepared on or about July 9, 1954 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons whose names appear on page 1, each of whom was then an employee of defendant.

G-605 (DP-2903)

This document was produced by the defendant from its files. It was prepared on or about August 12, 1954 by D. H. Walker, then Manager of Commercial Research of defendant and was distributed to the addressee and to the other persons indicated on page 1, each of whom was then an employee of defendant.

G-606 (DP-3154)

This document was produced by the defendant from its files. It was prepared in or about September 1954 [fol. 563] by the Sales Analysis Department of defendant.

G-607 (DP-2902)

This document was produced by the defendant from its files. It was prepared on or about September 17,

1954 by or for Dana Hill, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons indicated on page 2, each of whom was then an employee of defendant.

G-608 (DP-2901)

This document was produced by the defendant from its files. It was prepared on or about October 21, 1954 by or for Dana Hill, then Manager of Commercial Research of defendant and was distributed to the addressee and to the persons indicated on page 3, each of whom was then an employee of defendant.

G-609 (DP-2504)

This document was produced by the defendant from its files. J. Heinen, whose name appears on page 9, was Manager of Packaging Engineering of defendant on October 27, 1954.

G-610 (DP-2924)

[fol. 564] This document was produced by the defendant from its files. It was prepared on or about November 24, 1954 by or for T. L. Sanders, then Supervisor, Marketing Analysis of defendant and was distributed to the addressee and to the persons indicated on page 2, each of whom was then an employee of defendant.

G-612 (DP-2973)

This document was produced by the defendant from its files. It was prepared on or about December 13, 1954 by S. B. Smart, then Assistant Products Sales Manager of defendant.

G-613 (DP-2904)

This document was produced by the defendant from its files. It was prepared on or about March 4, 1955 by S. B. Smart, then an employee of the defendant and signed by C. H. Buckley, then an employee of defendant.

G-614 (DP-2919)

This document was produced by the defendant from its files. It was prepared on or about July 26, 1955 by or for R. W. Everett, then a Market Analyst of defendant. It was distributed to the addressee and to the persons named on the bottom of page 2, each of whom [fol. 565] was then an employee of defendant.

G-615 (DP-2918)

This document was produced by the defendant from its files. It was prepared on or about August 31, 1955, by or for W. D. Way, Jr., then a Market Analyst of defendant. It was distributed to the addressee and to the persons named on page 2, each of whom was then an employee of defendant.

G-616 (DP-3155)

This document was produced by the defendant from its files. It was prepared in or about December, 1955 by the Commercial Research Department and/or the Sales Analysis Department of defendant.

G-617 (DP-2921)

This document was produced by the defendant from its files. It was prepared in or about March, 1956 by C. H. Buckley, then Products Sales Manager of defendant. It was received by L. A. Carey, then an employee of defendant.

G-619 (DP-3156)

This document was produced by the defendant from its files. It was prepared in or about December, 1957 by the Commercial Research Department of defendant.

[fol. 566] G-620 (DP-3153)

This document was produced by the defendant from its files. It was prepared in or about March, 1958 by the Sales Analysis Department of defendant.

G-621 (DP-2956)

This document was produced by the defendant from its files.

G-622 (DP-2923)

This document was produced by the defendant from its files. It was prepared in or about May, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-623 (DP-2922)

This document was produced by the defendant from its files. It was prepared in or about September, 1955 by Batten, Barton, Durstine & Osborn, Inc. for defendant.

G-624 (DP-2704)

This document was produced by the defendant from its files. It was prepared in or about July or August, 1954 by C. E. Hooper, Inc. for defendant.

G-625 (DP-2702)

[fol. 567] This document was produced by the defendant from its files. It was prepared in or about July or August, 1954 by C. E. Hooper, Inc. for defendant.

G-626 (DP-2707)

This document was produced by the defendant from its files. It was prepared in or about August or September, 1954 by C. E. Hooper, Inc. for defendant.

G-627 (DP-2709)

This document was produced by the defendant from its files. It was prepared in or about August or September, 1954 by C. E. Hooper, Inc. for defendant.

G-628 (DP-2925)

This document was produced by the defendant from its files. It was prepared in or about September or October, 1954 by C. E. Hooper, Inc. for defendant.

G-629 (DP-2721)

This document was produced by the defendant from its files. It was prepared in or about July, 1955 by C. E. Hooper, Inc. for defendant.

[fol. 568] G-630 (DP-2723)

This document was produced by the defendant from its files. It was prepared in or about July, 1955 by C. E. Hooper, Inc. for defendant.

G-631 (DP-2727)

This document was produced by the defendant from its files. It was prepared in or about August, 1955 by C. E. Hooper, Inc. for defendant.

G-632 (DP-2920)

This document was produced by the defendant from its files. It was prepared in or about July or August, 1957 by C. E. Hooper, Inc. for defendant.

G-633 (DP-2749)

This document was produced by the defendant from its files. It was prepared in the latter part of 1955 or early in 1956 by Market Research Corporation of America for defendant.

G-634 (DP-2748)

This document was produced by the defendant from its files. It was prepared during 1955 by Market Research Corporation of America for defendant.

The following documents were produced from the files of the defendant. They were prepared in or about [fol. 569] the months indicated, by or for defendant for distribution to grocery stores and other persons interested in the merchandising of foods:

G-635 (DP-259) February, 1955

G-636 (DP-271) April, 1956

G-637 (DP-274) September, 1956

G-638 (DP-276) November, 1956

G-639 (DP-279) February, 1957

G-640 (DP-281) April, 1957

G-641 (DP-282) May, 1957

G-642 (DP-285) August, 1957

G-643 (DP-290) January, 1958

G-644 (DP-295) June, 1958

G-645 (DP-299) October, 1958

G-646 (DP-301) December, 1958

G-648 (DP-338)

This document was produced by the defendant from its files. It was prepared in or about July, 1956 by or for defendant for distribution to food brokers.

G-649 (DP-840)

This document was produced by the defendant from [fol. 570] its files. It was prepared in or about June, 1957 by or for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-650

This document is the fourth page of Exhibit G-649.

G-651 (DP-324)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated in the following magazines:

Supermarket News May 2, 1955

Food Topics May 2, 1955

Chain Store Age, Grocery Edition May, 1955

Progressive Grocer May, 1955

Super Market Merchandising May, 1955

G-652 (DP-326)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Supermarket News	July 4, 1955
[fol. 571] Food Topics	July 4, 1955
Chain Store Age, Grocery Edition	July, 1955
Progressive Grocer	July, 1955
Super Market Merchandising	July, 1955

G-653 (DP-327)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News	August 8, 1955
Food Topics	August 8, 1955
Chain Store Age, Grocery Edition	August, 1955
Progressive Grocer	August, 1955
Super Market Merchandising	August, 1955

G-654 (DP-330)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated at the following magazines:

Supermarket News	November 7, 1955
Food Topics	November 7, 1955
[fol. 572] Chain Store Age, Grocery Edition	November, 1955
Progressive Grocer	November, 1955
Super Market Merchandising	November, 1955

G-655 (DP-331)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News	December 5, 1955
Food Topics	December 5, 1955

Chain Store Age, Grocery Edition	December, 1955
Progressive Grocer	December, 1955
Super Market Merchandising	December, 1955

G-656 (DP-344)

This document was produced by the defendant from its files. It was prepared in or about May, 1958 by or for defendant for distribution to food brokers.

[fol. 573] G-657 (DP-378)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Topics	August 8, 1955
Coffee & Tea Industries	March, June, September, 1958
Tea & Coffee Trade Journal	April, July, November, 1958

G-658 (DP-395)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Coffee & Tea Industries	March, 1957
Food Packaging	February, 1957
Packaging Parade	April, 1957
Tea & Coffee Trade Journal	March, 1957
Food Engineering	March, 1957
Food Field Reporter	March 4, 1957
Food Processing	March, 1957
Food Technology	March, 1957

[fol. 574] G-659 (DP-424)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	February 19, 1955
Fortune	March, 1955
Time	February 14, 1955
The Canner	March 21, 1955
The Canning Trade	March 14, 1955
Food Packer	April, 1955
Food Technology	April, 1955
Western Canner & Packer	April, 1955

G-660 (DP-426)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	March 30, 1953
Fortune	May, 1953
Business Week	April 4, 1953

G-661 (DP-496)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 575] defendant in the issues of the dates indicated of the following magazines:

American Journal of Nursing	July, 1952
	January, 1953
	August, 1953
	January, 1954
Journal of the American Medical Association	August 23, 1952
	January 10, 1953
	June 27, 1953
	January 23, 1954
Journal of Pediatrics	July, 1952
	January, 1953
	July, 1953
	January, 1954

G-662 (DP-497)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in Food Topics—West Coast Edition—
March 23, 1959.

G-663 (DP-503)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 576] following magazines:

American Journal of Nursing	May, 1954
	September, 1954
	January, 1955
Journal of the American Medical Association	March 20, 1954
	July 2, 1954
Journal of Pediatrics	March, 1954
	July, 1954

G-664 (DP-545)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Aerosol Age	June, 1958
	August, 1958
Food Engineering	July, 1958
	September, 1958
Food Processing	July, 1958
Food Field Reporter	June 23, 1958
	October 13, 1958
Food Business	June, 1958
Modern Packaging	August, 1958
Packaging Parade	July, 1958
[fol. 577] Good Packaging	July, 1958
	September, 1958

G-665 (DP-554)

This document was produced by the defendant from its files. It was prepared by or for defendant for distribution to food canners.

G-666 (DP-558)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-667 (DP-594)

This document was produced by the defendant from its files. It was prepared by or for defendant.

G-668 (DP-712)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Business	November, 1957
	December, 1957
Food Field Reporter	November 11, 1957
	December 9, 1957

[fol. 578] G-669 (DP-716)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Canner & Freezer	March 4, 1957
	July 8, 1957
Canning Trade	March 4, 1957
	July 15, 1957
Food Engineering	March, 1957
	August, 1957
Food Packer	April, 1957
	August, 1957
Food Processing	April, 1957
	September, 1957
Western Canner & Packer	April, 1957
	August, 1957

G-670 (DP-719)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by de-

defendant in the issues of the dates indicated of the following magazines:

Canner & Freezer	February 4, 1957
	September 2, 1957
[fol. 579]	November 11, 1957
Canning Trade	February 4, 1957
	September 2, 1957
	November 11, 1957
Food Business	February, 1957
Food Field Reporter	February 18, 1957
Food Packer	February, 1957
	October, 1957
Western Canner & Packer	February, 1957
	October, 1957
	December, 1957

G-671 (DP-723)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Glass Packers	February, 1957
	March, 1957
Good Packaging	March, 1957
Modern Packaging	February, 1957
Packaging Parade	March, 1957

G-672 (DP-730)

This document was produced by the defendant from [fol. 580] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Soft Drink Journal	November, 1957
	December, 1957
Bottling Industry	October 22, 1957
	November 5, 1957
	December 3, 1957
	December 31, 1957
Mid-Continent Bottler	December, 1957
Malt Bottlers Gazette	November, 1957

December, 1957
 Western Bottler December, 1957

G-673 (DP-710)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Engineering May, 1958
 Food Processing March, 1958
 Food Field Reporter May 12, 1958
 Food Business June, 1958
 Canning Trade March 3, 1958
 Canner & Freezer March 17, 1958
 [fol. 581] Food Packer March, 1958
 Western Canner & Packer March, 1958

G-674

This document is a copy of an advertisement placed by defendant in Western Canner & Packer, issue of May 1, 1958.

G-675 (DP-587)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in American Directory of Brewers—1955-56 edition.

G-676 (DP-479)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer April, 1954
 September, 1954
 Brewer & Dispenser April, 1954
 October, 1954
 Brewers Digest May, 1954
 September, 1954

Brewers Journal September, 1954

Modern Brewery Age April, 1954

[fol. 582] Western Brewing & Distributing

May, 1954

November, 1954

G-677 (DP-375)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer **May, 1958**

October, 1958

Brewer & Dispenser June, 1958

October, 1958

Brewers Journal June, 1958

November, 1958

Brewers Digest May, 1958

October, 1958

Modern Brewery Age May, 1958

November, 1958

Western Brewing & Distributing May, 1958

October, 1958

G-678 (DP-381)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines: _____

American Brewer September, 1957

Brewer & Dispenser August, 1957

[fol. 583] December, 1957

Brewers Digest August, 1957

November, 1957

Brewers Journal September, 1957

Modern Brewery Age August, 1957

Western Brewing & Distributing August, 1957

G-679. (DP-422)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by.

defendant in the issues of the dates indicated of the following magazines:

Time	July 26, 1954
Business Week	July 24, 1954
Fortune	September, 1954

G-680 (DP-439)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	July 14, 1957
Fortune	August, 1957
Time	July 9, 1957

G-681 (DP-477)

This document was produced by the defendant from [fol. 584] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Brewer	February, 1953
	March, 1955
	September, 1955
Brewer & Dispenser	February, 1955
	April, 1955
Brewers Digest	February, 1955
	March, 1955
	September, 1955
Brewers Journal	February, 1955
Modern Brewery Age	February, 1955
	March, 1955
	November, 1955
Western Brewing & Distributing	March, 1955
	September, 1955

G-682 (DP-569)

This document was produced by the defendant from its files. It was prepared on or about May 22, 1955 by or for defendant for distribution to unidentified newspapers.

G-683 (DP-413)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 585] defendant in the issues of the dates indicated of the following magazines:

Business Week	March 6, 1954
Fortune	April, 1954
Time	March 1, 1954

G-684 (DP-643)

This document was produced by the defendant from its files. It was prepared on or about August 31, 1955 by or for the defendant for distribution to unidentified persons outside of defendant's organization.

G-685 (DP-626)

This document was produced by the defendant from its files. It was prepared on or about July 6, 1955 by or for the defendant for distribution to unidentified newspapers.

G-686 (DP-637)

This document was produced by the defendant from its files. It was prepared on or about June 29, 1955 by or for defendant for distribution to unidentified trade journals.

G-687 (DP-1424)

This document was produced by the defendant from its files. It was prepared on or about April 1, 1955 by [fol. 586] D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-688 (DP-1425)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1955 by D. A. Johnson, then Manager of Advertising & Sales

Promotion of defendant and distributed to unidentified persons.

G-689 (DP-1426)

This document was produced by the defendant from its files. It was prepared on or about April 15, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons:

G-690 (DP-1428)

This document was produced by the defendant from its files. It was prepared on or about April 29, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-691 (DP-1429)

This document was produced by the defendant from its files. It was prepared on or about May 6, 1955 by [fol. 587] D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-692 (DP-1430)

This document was produced by the defendant from its files. It was prepared on or about May 13, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-693 (DP-1432)

This document was produced by the defendant from its files. It was prepared on or about May 27, 1955 by D. A. Johnson, then Manager of Advertising & Sales Promotion of defendant and distributed to unidentified persons.

G-694

This document is a copy of an advertisement placed by defendant in Modern Packaging, issue of June, 1957.

G-695

This document is a copy of an advertisement placed by defendant in Modern Packaging, issue of August, 1957.

[fol. 588] G-696 (DP-720)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Modern Brewery Age, May, 1957 and September, 1957 issues.

G-697 (DP-765)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Modern Brewery Age, March, 1957 and July, 1957 issues.

G-698 (DP-1366)

This document was produced by the defendant from its files.

G-699 (DP-714)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Drug & Cosmetic Industry	March, 1958
American Perfumer	July, 1958

G-700 (DP-1414)

This document was produced by the defendant from its files.

G-701 (DP-391)

This document was produced by the defendant from [fol. 589] its files. It is a copy of an advertisement placed by defendant in the issue of the dates indicated of the following magazines:

Modern Packaging	July, 1957
	November, 1957
	January, 1958
Packaging Parade	July, 1957
	December, 1957
	January, 1958
Drug & Cosmetic Industry	July, 1957
	November, 1957
Drug Trade News	July 15, 1957
	November 18, 1957

G-702 (DP-392)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Modern Packaging	December, 1957
Packaging Parade	December, 1957
Drug & Cosmetic Industry	September, 1957

G-703 (DP-346)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 590] defendant in the issues of the dates indicated of the following magazines:

Aerosol Age	September, 1958
	November, 1958
Soap & Chemical Specialties	October, 1958
Modern Packaging	December, 1958
Packaging Parade	December, 1958

G-704 (DP-377)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Packaging Parade	May, 1958
Aerosol Age	April, 1958
	July, 1958
Soap & Chemical Specialties	April, 1958
Drug & Cosmetic Industry	April, 1958
	October, 1958
Drug Trade News	August 11, 1958
Modern Packaging	May, 1958

G-705 (DP-393)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 591] Aerosol Age	May, 1958
	October, 1958
Drug & Cosmetic Industry	July, 1958
Drug Trade News	June 16, 1958
	November 3, 1958
Modern Packaging	September, 1958
Packaging Parade	September, 1958

G-706 (DP-604)

This document was produced by the defendant from its files. It was prepared on or about February 7, 1958 by or for the Publicity Department of defendant and distributed to trade journals.

G-707 (DP-612)

This document was produced by the defendant from its files. It was prepared on or about July 8, 1957 by or for the Publicity Department of defendant and distributed to trade journals.

G-708 (DP-615)

This document was produced by the defendant from its files. It was prepared on or about April 10, 1957 by or for the Publicity Department of defendant and distributed to trade journals.

G-709 (DP-325)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by [fol. 592] defendant in the issues of the dates indicated of the following magazines:

Supermarket News	June 6, 1955
Food Topics	June 6, 1955
Chain Store Age, Grocery Edition	June, 1955
Progressive Grocer	June, 1955
Super Market Merchandising	June, 1955

G-710 (DP-329)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Supermarket News	October 10, 1955
Food Topics	October 10, 1955
Chain Store Age, Grocery Edition	October, 1955
Progressive Grocer	October, 1955
Super Market Merchandising	October, 1955

G-711 (DP-362)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 593] Institutions Magazine	November, 1958
Volume Feeding & Management	November, 1958

G-712 (DP-350)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Chain Store Age—	
(Grocers Edition)	October, 1956
Food Topics	October 8, 1956
Nargus Bulletin	October, 1956
Progressive Grocer	October, 1956
Super Market Merchandising	October, 1956
Super Market News	October 8, 1956

G-713 (DP-365)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

National Provisioner	January 26, 1957
Meat	January, 1957
	February, 1957

G-714 (DP-837)

This document was produced by the defendant from its files. It was prepared in or about May, 1958 by or [fol. 594] for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-715 (DP-874)

This document was produced by the defendant from its files. It was prepared on or about April 8, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-716

This document is a copy of an advertisement placed by defendant in Time magazine, issue of March 16, 1959.

G-718

This document is a copy of an advertisement placed by defendant in Business Week magazine, issue of April 18, 1959.

G-719 (DP-433)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week	January 8, 1955
Time	January 3, 1958
Fortune	January, 1959

[fol. 595] G-720 (DP-437)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Fortune	January, 1956
Business Week	November 12, 1955
Time	November 21, 1955

G-721 (DP-547)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	January 20, 1958
Fortune	February, 1958
Business Week	January 18, 1958
Canner & Freezer	January 20, 1958
	February 3, 1958
Canning Trade	January 20, 1958
	February 3, 1958
Southern Food Processor	February, 1958
Western Canner & Packer	February, 1958
Food Packer	February, 1958

[fol. 596] G-722 (DP-562)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Time October 27, 1958
Business Week October 4, 1958

G-723 (DP-966)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time July 8, 1957
Fortune August, 1957
Business Week July 13, 1957

G-724 (DP-954)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Business Week November 22, 1958
Fortune December, 1958

G-725 (DP-951)

This document was produced by the defendant from [fol. 597] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time December 30, 1957
Fortune December, 1957
Business Week December 28, 1957
Coffee & Tea Industries January, 1958
Tea & Coffee Trade January, 1958

G-726 (DP-947)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

A black and white micrograph showing a cross-section of a plant stem. A prominent, circular vascular cylinder is visible in the center, surrounded by a ring of cells. The outer layers of the stem are also visible.

G-727 (DP-940)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 598] following magazines:

Time June 16, 1958
Business Week June 14, 1958
Fortune July, 1958

G-728 (DP-563)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time March 17, 1958
Business Week March 22, 1958
Fortune March, 1958

G-729 (DP-941)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time July 7, 1958
Fortune August, 1958
Business Week July 12, 1958

G-730 (DP-945)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the [fol. 599] following magazines:

Time	May 13, 1957
Business Week	May 18, 1957
Fortune	June, 1957
Canner & Freezer	June 10, 1957
Canning Trade	June 10, 1957
Food Technology	June, 1957
Food Packer	June, 1957
Southern Food Processor	June, 1957
Western Canner & Packer	June, 1957

G-731 (DP-948)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	January 19, 1959
Fortune	February, 1959
Business Week	February 21, 1959
Canner & Packer	February, 1959
Canning Trade	February 2, 1959
	March 9, 1959
Southern Food Processor	February, 1959

G-732 (DP-953)

This document was produced by the defendant from [fol. 600] its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time	April 14, 1958
Business Week	April 19, 1958
Fortune	April, 1958

G-733 (DP-959)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in New York State Canner & Freezers Association Directory, issue of 1958.

G-734 (DP-944)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Time December 3, 1956
 Fortune December, 1956
 Business Week December 1, 1956

G-735 (DP-946)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 601] Time April 15, 1957
 Fortune May, 1957
 Business Week April 20, 1957

G-736

This document is a copy of an advertisement placed by defendant in Western Canner & Packer, issue of February, 1958.

G-737

This document is a copy of an advertisement placed by defendant in Glass Packer, issue of January, 1957.

G-739 (DP-887)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Bottling Industry January 17, 1956
 February 28, 1956
 American Soft Drink Journal January, 1956
 February, 1956
 Mid-Continent Bottler January, 1956
 February, 1956

National Bottlers Gazette January, 1956
 February, 1956
 [fol. 602] Western Bottler January, 1956
 February, 1956

G-740 (DP-889)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

American Soft Drink Journal March, 1956
 April, 1956
 Bottling Industry March 13, 1956
 April 10, 1956
 Mid-Continent Bottler March, 1956
 April, 1956
 National Bottlers Gazette March, 1956
 April, 1956
 Western Bottler March, 1956
 April, 1956

G-741 (DP-890)

This document was produced by the defendant from its files.

G-742 (DP-897)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the [fol. 603] following magazines:

American Brewer June, 1958
 Brewer & Dispenser July, 1958
 Brewers Digest July, 1958
 Brewers Journal June, 1958
 Modern Brewery Age June, 1958
 Western Brewing & Distributing July, 1958

G-743 (DP-904)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Business Week	August 22, 1953
Fortune	September, 1953
Time	August 17, 1953

G-744 (DP-914)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in Coca-Cola Bottler, issue of June, 1956.

G-745 (DP-919)

This document was produced by the defendant from its files. It was prepared in or about November, 1956 by or for defendant and distributed to District Sales [fol. 604] Managers and Plant Managers.

G-746 (DP-926)

This document was produced by the defendant from its files. It was prepared on or about July 6, 1956 by or for the Publicity Department of defendant and distributed to trade journals.

G-747 (DP-927)

This document was produced by the defendant from its files. It was prepared on or about June 14, 1956 by or for the Publicity Department of defendant and distributed to trade journals.

G-748 (DP-925)

This document was produced by the defendant from its files. It was prepared by or for defendant or a subsidiary of defendant.

G-749 (DP-924)

This document was produced by the defendant from its files. It was prepared by or for defendant or a subsidiary of defendant.

G-750 (DP-877)

This document was produced by the defendant from its files. It was prepared by or for White Cap Company, a subsidiary of defendant.

[fol. 605] G-751 (DP-856)

This document was produced by the defendant from its files. It was prepared by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-752 (DP-856)

This document was produced by the defendant from its files. It was prepared on or about February 14, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-753 (DP-1380)

This document was produced by the defendant from its files.

G-754 (DP-839)

This document was produced by the defendant from its files. It was prepared in or about November, 1957 by or for White Cap Company, a subsidiary of defendant, for distribution to persons packing foods in glass.

G-756 (DP-871)

This document was produced by the defendant from its files. It was prepared on or about January 9, 1958 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

[fol. 606] G-757 (DP-867)

This document was produced by the defendant from its files. It was prepared on or about April 17, 1957 by Harshe-Rotman, Inc. for White Cap Company, a subsidiary of defendant.

G-758 (DP-870)

This document was produced by the defendant from its files. It was prepared by Harshe-Roman, Inc. for White Cap Company, a subsidiary of defendant.

G-759 (DP-875)

This document was produced by the defendant from its files. It is a copy of a page of the Food Field Reporter, issue of November 11, 1957, containing amongst other things, a copy of an advertisement placed by White Cap Company, a subsidiary of defendant.

G-760 (DP-817)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Processing	September, 1958
Food Field Reporter	September, 1958
[fol. 607] Glass Packer	September, 1958
Packaging Parade	September, 1958
Western Canner & Packer	September, 1958

G-761 (DP-808)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	September, 1957
Food Field Reporter	September, 1957
Glass Packer	September, 1957
Packaging Parade	September, 1957
Western Canner & Packer	September, 1957

G-762 (DP-810)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by

defendant in the issues of the dates indicated of the following magazines:

Food Processing	June, 1958
Food Field Reporter	June, 1958
Glass Packer	June, 1958
Packaging Parade	June, 1958
Western Canner & Packer	June, 1958

[fol. 608] G-763 (DP-818)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Field Reporter	July, 1958
Glass Packer	July, 1958
Packaging Parade	July, 1958
Western Canner & Packer	July, 1958

G-764 (DP-783)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	June, 1956
Food Field Reporter	June, 1956
Glass Packer	June, 1956
Packaging Parade	June, 1956
Western Canner & Packer	June, 1956

G-765 (DP-785)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 609] Food Packer	April, 1956
Food Field Reporter	April, 1956
Glass Packer	April, 1956
Packaging Parade	April, 1956
Western Canner & Packer	April, 1956

G-766 (DP-780)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	April, 1955
Food Field Reporter	April, 1955
Glass Packer	April, 1955
Western Canner & Packer	April, 1955

G-767 (DP-776)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	May, 1956
Food Field Reporter	May, 1956
Glass Packer	May, 1956
Packaging Parade	May, 1956
Western Canner & Packer	May, 1956

[fol. 610] G-768 (DP-820)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	November, 1956
Food Field Reporter	November, 1956
Glass Packer	November, 1956
Western Canner & Packer	November, 1956

G-769 (DP-778)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

Food Packer	February, 1955
Food Field Reporter	February, 1955

Glass Packer February, 1955
 Western Canner & Packer February, 1955

G-770 (DP-812)

This document was produced by the defendant from its files. It is a copy of an advertisement placed by defendant in the issues of the dates indicated of the following magazines:

[fol. 611] Food Processing January, 1958
 Food Field Reporter January, 1958
 Glass Packer January, 1958
 Packaging Parade January, 1958
 Western Canner & Packer January, 1958

G-771 (DP-826)

This document was produced by the defendant from its files. It was prepared for use as advertising material by or for White Cap Company, a subsidiary of defendant.

G-772 (DP-827)

This document was produced by the defendant from its files. It was prepared for use as advertising material by or for White Cap Company, a subsidiary of defendant.

G-784 (DP-3247)

This document was produced by the defendant from its files. It was prepared by or for defendant.

The foregoing stipulations are subject to the following:

1. The stipulations do not apply to handwritten notes or interlineations on the documents.
- [fol. 612] 2. Defendant does not concede anything with respect to the accuracy or reliability of the material contained in any document, or the source of such material, or when or under what circumstances such material was prepared, except as specifically stated in the stipulations.

3. Except with respect to documents G-403, F-405A, G-423, G-424, G-425, G-426, G-427 and G-446, the word "prepared" as used in the stipulations does not con-
note that the individual or organization named as hav-
ing prepared the document was the original source or
had personal knowledge of the information contained in
the document or that such individual or organization
certifies as to the accuracy or reliability thereof.

4. Where some or all of the original document was in
color, defendant does not concede that those documents
which are photostats are, in fact, true copies of the
original.

5. All objections are reserved, except as otherwise
specified.

[fol. 613] Willkie Farr Gallagher Walton
& Fitz Gibbon
15 Broad Street
New York 5, N. Y.

June 9, 1960.

Honorable Robert A. Bicks,
Assistant Attorney General,
Antitrust Division,
United States Department of Justice
Washington, D. C.

Re: United States of America v Continental Can
Company, Inc. and Hazel-Atlas Glass Company

—Civil Action No. 112-387

Dear Mr. Bicks:

This is to advise that in the interest of expediting the trial of the above case, defendant does not propose to make any objections to the admissibility of the following numbered documents in the event they are offered in evidence, even though their relevance is unclear. With respect to those documents which were produced by defendant, the numbers assigned by the defendant at the time they were produced are given in parenthesis immediately following the number assigned by the Government.

[fol. 614] G-132

G-170B

G-171-184, inclusive

G-299

G-300

G-403 (DP-2543)

G-405A (DP-2519)

G-423 (DP-3132)

G-424 (DP-3131)

G-425 (DP-2497)

G-426 (DP-2908)

G-427 (DP-2909)

G-448 to G-466 inclusive (DP-2560 to DP-2578 inclusive)

G-467 (DP-2559)

G-468 (DP-2558)

G-469 (DP-2557)

G-470 to G-588, inclusive (DP-2579 to DP-2687, inclusive)

G-651 (DP-324)

G-652 (DP-326)

G-653 (DP-327)

G-654 (DP-330)

G-655 (DP-331)

[fol. 615] G-657 (DP-378)

G-658 (DP-395)

G-659 (DP-424)

G-660 (DP-426)

G-661 (DP-496)

G-662 (DP-497)

G-663 (DP-503)

G-664 (DP-545)

G-665 (DP-554)

G-666 (DP-558)

G-667 (DP-594)

G-668 (DP-712)

G-669 (DP-716)

G-670 (DP-719)

G-671 (DP-723)

G-672 (DP-730)

G-673 (DP-710)

G-674

G-675 (DP-587)

G-676 (DP-479)

G-677 (DP-375)

G-678 (DP-381)

G-679 (DP-422)

G-680 (DP-439)

[fol. 616] G-681 (DP-477)

G-682 (DP-569)

G-863 (DP-413)

G-694

G-695

G-696 (DP-720)

G-697 (DP-765)

G-699 (DP-714)

G-701 (DP-391)
G-702 (DP-392)
G-703 (DP-546)
G-704 (DP-377)
G-705 (DP-393)
G-706 (DP-604)
G-708 (DP-615)
G-709 (DP-325)
G-710 (DP-329)
G-711 (DP-362)
G-712 (DP-350)
G-713 (DP-365)
G-716
G-718
G-719 (DP-433)
G-720 (DP-437)
[fol. 617] G-721 (DP-547)
G-722 (DP-563)
G-723 (DP-966)
G-724 (DP-954)
G-725 (DP-951)
G-726 (DP-947)
G-727 (DP-940)
G-728 (DP-563)
G-729 (DP-941)
G-730 (DP-945)
G-731 (DP-948)
G-732 (DP-953)
G-733 (DP-959)
G-734 (DP-944)
G-735 (DP-946)
G-736
G-737
G-739 (DP-887)
G-740 (DP-889)
G-742 (DP-897)
G-743 (DP-904)
G-744 (DP-914)
G-746 (DP-926)
G-747 (DP-927)
[fols. 618-671] G-760 (DP-817)
G-761 (DP-808)

G-762 (DP-816)
G-763 (DP-818)
G-764 (DP-783)
G-765 (DP-785)
G-766 (DP-780)
G-767 (DP-776)
G-768 (DP-820)
G-769 (DP-778)
G-770 (DP-812)
G-788

Very truly yours (Signed) Helmer R. Johnson.

cc: Honorable Frederick van Pelt Bryan, United States
Court House, Foley Square, New York 7, New York.

[fol. 672] M. A. HELLRUNG, called as a witness on behalf of the Government, was duly sworn.

Mr. McManus: Your Honor, before starting to question Mr. Hellrung, I went over the documents that were furnished by Owens-Illinois, and document No. 348-I, which was marked for identification, Mr. Hellrung felt was of such a business secret type of document that he asked me if I would withdraw it. The Government would be glad to withdraw it and have the copies returned to the company, or in lieu thereof, that it be considered in the same category as statistical information.

The Court: As the information we discussed yesterday afternoon.

Mr. McManus: Yes, sir.

The Court: All right.

Now what do you say to that, Mr. Hughes?

Mr. Hughes: Whatever you want to do, it is up to you.

[fol. 673] You can either offer it or withdraw it.

The Court: You have no objection to its withdrawal?

Mr. Hughes: No, sir; nor to its being offered—whatever he wants to do.

Mr. McManus: I would prefer to withdraw it, your Honor, and if they have no objections, because this actually was not covered by our subpoena, if they would return the copies to me, I will return them to the company.

The Court: Is that satisfactory to you?

Mr. Hughes: Yes.

The Court: The matter will be handled in that fashion.

Direct examination.

By Mr. McManus:

Q. Mr. Hellrung, by whom are you employed?

A. The Owens-Illinois Glass Company.

Q. And for what period of time have you been employed by that company?

A. The Owens-Illinois Glass and its predecessor, Illinois Glass, since 1918.

Q. And in what capacities have you been employed by that company or its predecessor company?

A. Primarily in accounting, clerical accounting; statistical [fol. 674] cal. Primary accounting.

Q. Now, what is your present position with Owens-Illinois Glass Company?

A. I am a vice-president in the Glass Container Division.

Q. And what are your duties as vice-president in the Glass Container Division?

A. I am responsible for the cost accounting, budgeting, profit forecasting and statistical work for the Glass Container Division.

Q. And who is your immediate superior?

A. Mr. C. G. Bensinger, who is executive vice-president of the company and president of the Glass Container Division.

Q. And do you have employees under you?

A. I do.

Q. And who would come directly under you?

A. The comptroller reports to me, and his entire staff.

Q. And approximately how many employees are in his staff?

A. About 65.

Q. I show you Government's Exhibit 348, which has been marked for identification; do you recognize that document? [fol. 675] A. I do.

Q. Is that document from the files of the Owens-Illinois Glass Company?

A. It is.

Q. And by whom was it prepared?

A. By people in the comptroller's department.

Q. And for whom was it prepared?

A. For me.

Q. And are you familiar with the document?

A. I am.

Q. Did you request that the document be prepared for you?

A. I did.

Q. And to your knowledge, did a number of people work on this document?

A. That's right.

Q. And is it a regular type document that the comptroller's office would prepare for you?

A. It is.

OFFERS IN EVIDENCE

Mr. McManus: Your Honor, the Government offers 348 in evidence.

Mr. Hughes: No objection.

The Court: It may be received.

[fol. 676] (Government's Exhibit 348 for identification received in evidence.)

Mr. McManus: 348-I was withdrawn. We have subcategories here.

The Court: Let me see the exhibit.

Mr. McManus: Your Honor, if I may ask a question of the defendant?

We have a number of these documents, 348-A through H.

The Court: All right.

Mr. McManus: Which have been marked for identification, and if the defendants have no objection I would like to offer them in evidence.

Mr. Hughes: No objection.

The Court: All right.

Mr. Hughes: Just one moment, your Honor.

May I go off the record with Mr. McManus to get some mechanical things straightened out?

The Court: Yes, sure.

(Discussion off the record between Mr. Hughes and Mr. McManus.)

(Government's Exhibits 348-A through 348-H for identification received in evidence.)

The Court: Are these similar studies, these documents? [fol. 677] Mr. McManus: Yes, they are, your Honor.

The first one, the first subject deals with beer; the second with cans versus glass prices Florida fruit pack.

Mr. Hughes: Will you refer to them by exhibit number so that the record will be clear?

Mr. McManus: 348, study of can costs versus one-way bottle cost to brewer.

348-A, can versus glass prices Florida fruit pack, two pages.

348-B, study of quart one-way beer containers, glass versus tin.

348-C is cans versus glass prices 1942-1946 versus 1/1/57, two pages.

348-D is one-way beer prices, two pages:

The Court: 348 what?

Mr. McManus: D.

348-E is cans versus jar price per thousand ground coffee.

348-F is baby foods, tin versus glass.

And 348-G is beer containers one-way glass versus tin.

And 348-H is cans versus glass prices, and that consists [fol. 678] of three documents, the third of which is a chart and relates to beer, price comparison between cans and glass, and relates to beer, detergents, polish, aerosol.

The Court: Yes.

Now, what exhibit are you about to refer to now?

Mr. McManus: 235-A, sir.

Mr. Johnson: 235-A?

Mr. McManus: Yes.

The Court: Have you been giving the defendant information at the beginning of the session about these?

Mr. Hughes: Yes, they have, your Honor.

The Court: You have. All right.

Mr. McManus: Yes, sir.

By Mr. McManus:

Q. Mr. Hellrung, I show you Government's Exhibit 235-A, marked for identification.

A. Yes.

Q. Do you recognize that document?

A. I recognize it, yes.

Q. Have you seen that document before?

A. Yes, sir.

Q. There are initials at the bottom, G.C.B.

[fol. 679] A. C.G.B.

Q. C.G.B.?

A. Yes. That is Mr. Bensinger's initials.

Q. And there are certain initials at the top; whose are those?

A. One is the sales manager of the Glass Container Division, Mr. S. F. Davis. The other is Mr. R. E. Graham. This one is mine, M.A.H.

Q. Did you receive this document?

A. I did.

Mr. McManus: Your Honor, I would like to offer 235-A into evidence.

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit 235-A received in evidence.)

Mr. McManus: Now, your Honor, there is referred to in 235-A a chart as an attachment, which we don't intend to offer, but we have it here if the defendants insist we put it in.

Mr. Hughes: It is a matter of whatever they want to do, your Honor.

Mr. McManus: All right, we won't put it in, your Honor. [fols. 680-682] Your Honor, I am informed by the defendant that they have no objection to offering in evidence Government's Exhibit 235-B, which is marked for identification.

The Court: All right, it will be received.

(Government's Exhibit 235-B received in evidence.)

Mr. McManus: That is all I have. You may cross-examine.

Mr. Hughes: No questions.

The Court: All right; thank you, Mr. Hellrung.

(Witness excused.)

[fol. 683] GEORGE A. HOLLOWAY, called as a witness by the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, before I proceed with the examination, I have a few documents which I wish to be marked, which again will aid the Court.

The Court: All right, mark them for identification at this point.

(Marked Government's Exhibits 352, 353, 354, 355 and 356 for identification.)

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. New Caanan, Connecticut.

Q. You are employed by Chesebrough-Pond's?

A. Yes.

Q. How long have you been employed by that company or its predecessor?

A. Since July 1937.

The Court: What is your position with that company?

The Witness: General Purchasing Manager.

Q. I show you these exhibits, sir, and ask if you can identify them for us.

A. Exhibit No. 352 is a Christmas brochure put out [fol. 684] in 1952, covering the Seaforth products, which is one of the lines that our company has.

The next one, No. 353, is a Pond's price list covering the various Vaseline brand products, Pond's creams and beauty preparations, Seaforth products and Pertussin products.

No. 354 is a flyer or a brochure—not a brochure, a flyer, with reference to Pertussin antibiotic throat lozenges. It is a price sheet.

No. 355 is another Pertussin price sheet devoted mainly to the medicated room vaporizer.

No. 356 is a price list of the Prince Matchabelli and Simonetta lines of cosmetics and perfumes.

OFFERS IN EVIDENCE

Mr. Greenberg: Your Honor, I offer Government's Exhibit 356.

The Court: Have these gentlemen seen these documents?

Mr. Greenberg: Yes, sir. Pursuant to your instructions, your Honor, I show them to counsel.

Mr. Hughes: Yes, we have seen them.

The Court: Do you have any objection to this batch of documents?

Mr. Hughes: Yes, your Honor. I object to this one, your [fol. 685] Honor. I don't know what the purpose of the

offer of 356 is. It is all hearsay as far as we are concerned.

The Court: Apart from the hearsay, do you object to it on the ground of competence?

Mr. Hughes: I don't object on that ground.

The Court: This is just a price list.

Mr. Hughes: Yes.

The Court: What is the purpose of it, Mr. Greenberg?

Mr. Greenberg: Your Honor, the fact that these products were produced by this company and—

The Court: All right. I will take it.

Mr. Greenberg: I offer 356.

(Government's Exhibit 356 for identification received in evidence.)

The Court: What is the next one?

Mr. Greenberg: The next one is 352.

Mr. Hughes: I object to that, your Honor.

The Court: On the same ground, I take it.

Mr. Hughes: Yes, sir.

The Court: Overruled.

(Government's Exhibit 352 for identification received in evidence.)

[fol. 686] Mr. Greenberg: The next document is 353.

Mr. Hughes: The same objection.

The Court: Same ruling.

(Government's Exhibit 353 for identification received in evidence.)

Mr. Greenberg: I offer 355.

Mr. Hughes: I object to this one.

The Court: Let me see it.

I will take it. Objection overruled.

(Government's Exhibit 355 for identification received in evidence.)

The Court: Is there another one?

Mr. Greenberg: I am keeping this for a later time.

The Court: Are you going to put it in or not?

Mr. Greenberg: All right. I offer it at this time.

The Court: I take it that you have the same objection, Mr. Hughes.

Mr. Hughes: Yes, sir.

The Court: Same ruling.

(Government's Exhibit 354 for identification received in evidence.)

Q. Sir, do these various documents describe the products [fol. 687] that your company markets?

The Court: I want it understood that when I take matters of the nature of 355 which contain certain promotional material that I do not take any of this material for the proof of any statements in the nature of advertising or promotional material contained therein. It is taken solely for the purpose of identifying certain products as material put out by this company and for no other purpose.

Mr. Greenberg: Yes, your Honor, but the exhibit I think you are referring to indicates the various products—

The Court: What I am referring to is the usual sort of puffing language in here. This is a court and not an advertising agency.

Mr. Greenberg: I had no intention of offering it as an advertisement.

The Court: All right.

Q. What type of packages do you use for your products?

A. What type of packages?

Q. Yes.

A. We use everything from cartons, bottles, glass jars—do you mean for all of these things?

[fol. 688] Q. Let us approach it now on liquids.

A. On liquids?

Q. Yes.

A. On liquids we use either a glass bottle or we use our glass jar. We use a polyethylene or squeeze bottle.

In the case of aerosols, Pertussin vaporizers, that is a liquid and that is in an aerosol can.

Q. Pardon me. What was that?

A. That is an aerosol can, the Pertussin vaporizer.

Mr. Hughes: Your Honor, it seems to me that this lumping together becomes meaningless.

The Court: I presume that Mr. Greenberg is proceeding from the general to the specific.

Mr. Greenberg: Yes, your Honor. I just want to ask one or two more questions on that.

Q. Now the paste creams come under the same category?

A. The face creams?

Q. The paste creams.

A. We use collapsible tubes.

Q. Now the cold cream variety?

A. The viscous type. We use oval jars or flat jars or wide-mouth jars.

[fol. 689] Q. Is there such a thing as a flowing cream?

A. On the order of a liquid, yes.

Q. What kind of container do you use for that?

A. If it is sufficiently flowing so that it is pourable, we probably use and we do use a glass bottle, and we also use a squeeze bottle in one case.

Q. When you say a squeeze bottle, do you mean a plastic bottle?

A. A polyethylene bottle.

Q. I show you these government's exhibits and ask you to select first the products which are liquids and identify them, if you can, as to the containers.

Mr. Hughes: May I ask that the witness go slowly so that we can take this information down?

The Court: Yes.

Mr. Handler: And please start with the first exhibit so that we have some order.

The Court: Are they in order?

The Witness: Yes, I will put them in order.

The Court: Will you please be good enough to do that:

A. The first one I have is 352. 352 is the one that covers the Seaforth line. We have here in glass bottles lotions, shaving lotions and a cologne. Those are the only two [fol. 690] items that are in glass bottles.

We have a plastic for the deodorant container, a polyethylene container, and we have a plastic spray deodorant container, once again a polyethylene squeeze bottle. Those are all of the liquids in this first exhibit.

Q. Is there an oval bottle?

A. Yes, there is an oval bottle for the shave lotion.

Q. Is there an opal bottle?

A. There is an opal, wide-mouth jar or bottle which has

a deodorant in it. There is an opal bottle for a cologne. There is a flint glass bottle for a flask lotion. There is a flint glass bottle used for a pre-electric-shave lotion.

Mr. Hughes: Your Honor, this is practically meaningless to us. We would like to have the benefit of a copy of this exhibit so that we can follow it.

Mr. Greenberg: You can refer to this.

Mr. Hughes: The testimony becomes meaningless—

Q. Do you have extra copies of these exhibits?

A. I have several here, but I don't know that I have [fol. 691] the same ones.

The Court: Will you please try to give the other side copies of this material. When you ask a witness to come, ask him to bring sufficient copies so that they can be distributed. It is very difficult for the defendants to follow what is going on, and for the Court too, if we do not have sufficient copies. There is no copy for me and there is no copy for the defendants.

Mr. Greenberg: I will follow that procedure, your Honor. However, they have been using annual reports and they have not been furnishing us with copies of them, but we will follow your Honor's direction.

The Court: Mr. Greenberg, do not tell me what they have not done. I am concerned with the proper conduct of this trial. If you want copies of documents and you do not get them, apply to me and we will try to get you copies. I want everybody to have copies of everything that is being referred to in this trial. That is my policy. I want to have them too so that I know what is going on.

Mr. Greenberg: I will try to do that, your Honor.

The Witness: I only have an additional copy of one of [fol. 692] the documents in evidence, that is 353, and I have checked it and it is the same thing.

The Court: Has the Pond's price list all of those pictures?

The Witness: Yes.

The Court: Then let us take that.

The Witness: I beg your pardon. These other lines are separate.

The Court: They are separate?

The Witness: Yes, they are in separate brochures.

The Court: All right.

Q. Sir, I show you Government's Exhibit 353 and ask you to identify the types of glass containers which you use for the various products.

The Court: Is that Exhibit 1 that Mr. Hughes has?

Mr. Greenberg: Yes, sir.

The Court: All right.

A. We have pictures on the front page here. On the top left we have Vaseline Hair Tonic. This picture actually shows the carton but there is a flint-glass bottle in it.

Just below that is Vaseline White Petroleum Jelly, and [fol. 693] that is a wide-mouth, flint glass jar.

And in the upper righthand corner we have a Pond's Angel Skin Lotion, and that is in a flint glass bottle.

Towards the center we have a picture of Pond's Angel Touch, which is in a plastic squeeze bottle, polyethylene.

In the lower left we have a picture of Pertussin Cough Syrup, also in a carton, but it contains a flint glass bottle.

In the center, below, is an opal glass bottle for Seaforth Shave Lotion.

In the lower right it pictures three jars containing Pond's Cold Cream, Vanishing Cream and Dry Skin Cream. These are all opal glass wide-mouth jars.

The inside is just a repetition of this, as far as any glass containers are concerned. There are such things as a tin talc can, a plastic dusting powder box, a glass lipstick case, a plastic compact.

Q. All right, Mr. Holloway.

Mr. Hughes: Have you gone through all of the items on the first page? Are there any that you did not describe?

The Witness: There could be.

[fol. 694] Mr. Hughes: How about Vaseline Lip Ice?

The Witness: That is a metal tube with a plastic swivel mechanism, and the other one is a compact, a plastic polystyrene compact, which is used for a pressed powder.

Q. As a matter of fact, aren't Hazel-Atlas jars shown on the face of that?

A. I don't know.

Q. Or the type that they produce?

A. They produce them but other people do too.

Q. Sir, who are the producers of opal containers, opal jars?

A. That we use?

Q. That anyone can use.

A. I am not sure that I know all of them.

Q. Whose do you use?

A. We use Hazel-Atlas Glass Company, Wheaton Company and Carr-Lowery.

Q. That is a division of Anchor Hocking isn't it?

A. Yes.

Q. Sir, I show you G-356 and ask you to identify the products which use glass containers and plastic containers.

The Court: What is G-356?

[fol. 695] Mr. Greenberg: The Prince Matchabelli line.

The Court: If you want to follow this, Mr. Hughes, you or one of your associates can come up and do so, so that you will know what the witness is referring to.

A. This is the Prince Matchabelli line in the Fall of 1959, all of the perfume items—

Q. I just want you to indicate what they are.

A. All the perfumes are in flint glass bottles. All of the colognes are either in flint glass bottles or if they are aerosol they are in plastic-coated flint glass bottles.

The bath oils are in flint glass bottles. The bath salts are in flint glass or wide-mouth jars.

The Polydern line of creams are in opal jars except that there is a skin freshener which is in a flint glass bottle.

The Black Watch line lotions and colognes are in flint glass bottles.

There are some other lotion items here but I don't know that that is necessary. It is more of the same flint bottles that are used for cologne.

The Court: Is there anything further you want on that, Mr. Greenberg?

[fol. 696] Mr. Greenberg: Are there any other creams or lotions that you have not mentioned?

The Witness: I can't think of any offhand, that I can see here.

Q. Sir, prior to 1956 did Hazel-Atlas sell your company glass containers?

A. Yes, sir.

Q. What type of glass containers?

A. Opal jars and flint glass bottles and flint glass wide-mouth jars.

Q. Referring to the flint glass containers, what products were they used for?

A. The wide-mouth flint glass jars?

Q. Generally speaking, what were they used for?

A. They were used for the Vaseline Petroleum Jelly. The flint glass bottles were used for Vaseline brand hair tonics, also for Pond's Angel Hand Lotion. And in the Matchabelli line, if this is prior to 1956, I cannot speak about this other than hearsay because we did not own the company then.

Q. But you have learned about that from your activities, generally speaking, what these containers have been used for?

A. Yes.

[fol. 697] Q. Since 1956 has Hazel-Atlas supplied you with the same type of containers?

A. Yes, sir.

Q. Generally for the same purposes, lotions, et cetera?

A. Yes.

Q. I don't think I asked you, sir, but will you briefly describe your duties and responsibilities since 1937.

The Court: Have you been Purchasing Manager of the company since then?

The Witness: Since 1937 there have been mergers in between.

The Court: Oh, I see.

Q. Will you just generally describe your duties.

A. I have been—

The Court: Is there any reason to go back to 1937?

Mr. Greenberg: Would you wish it later, in 1950?

The Court: Well, you have been with this company or its predecessors since 1937?

The Witness: That's right.

The Court: And always in the same general field?

[fol. 698] The Witness: That's right.

Q. Purchasing containers and things related to it?

A. Yes, sir.

The Court: You have had to do with purchasing mostly during that period of time?

The Witness: Mostly.

The Court: And you have been generally familiar with purchasing in this field during that period; particularly with reference to the companies you were associated with?

The Witness: Yes, sir.

Q. Sir, in your experience have representatives of plastic container companies been in contact with you for the purpose of promoting plastic containers for possible use by you?

A. Yes, sir.

Q. Can you give us, sir, the principal plastic container companies which have solicited business from your company?

A. In the plastic squeeze bottle field, it would be Imco of Kansas City, Plax Corporation, Hartford, and the old Elm Mills Corporation, which later became part of Continental Can. Those are probably the three leading ones [fol. 699] on plastic bottles. There were some rigid plastic jars sold by Colt Pat Firearms Company.

Q. Wasn't there a man named Thomacelli out in Long Island or some name like that who made plastic jars?

A. There was a plastic molder who brought in some models and brought in some jars and made a single cavity mold for use in the polyethylene jar, and also Imco had a polyethylene jar on the market.

Q. What kind of a company was this Long Island company?

A. That was a small company, mostly in the toy business, and nothing was ever done but samples.

Q. For what products have the plastic container manufacturers offered you their containers?

A. They have offered them for probably everything we have in the line.

Q. And what kind of people would you see?

A. Well, they were mostly—

The Court: Are they salesmen?

The Witness: Yes, sir.

The Court: Sales engineers?

The Witness: Yes, sir.

The Court: People of that caliber?

[fol. 700] The Witness: Yes, sir.

The Court: In other words, they were both technical men and salesmen trying to sell you their products?

The Witness: Yes. I personally did not see these people but my buyers would if I didn't.

Q. But did they report to you?

A. Yes.

Q. And you have been offered both plastic jars and plastic bottles?

A. Yes, sir.

Q. Sir, have the plastic container manufacturers when they came in brought samples of products of your competitors with them?

A. Yes, sir, on some occasions.

Q. And what did they try to do when they did that?

A. They tried to sell us the use of a particular package that they were trying to promote.

Q. They were interested in promoting the products of their company and—

A. Yes, certainly.

Mr. Hughes: I object to that.

The Court: In other words, all of the usual sales talk that you would expect from competent salesmen; is that [fol. 701] right?

The Witness: That's right.

Q. Has your company, during your experience with it, experimented with any of your products in plastic containers?

A. Yes, sir.

Q. Which ones?

A. Certainly every liquid or viscous cream or petroleum jelly in the entire Pond's line as contrasted with Prince Matchabelli, where you have colognes and things like that.

Q. Sir, bringing your thoughts back to 1935, your company had a reorganization, as I understand it.

A. Yes, there was a merger between Chesebrough Corporation and the Pond Extract Company.

Q. Do you recall what your president said about getting a new plastic jar?

Mr. Hughes: That is objected to as hearsay, irrelevant and immaterial.

The Court: I will sustain the objection.

Mr. Greenberg: Of course, your Honor, we have had many instances where answers have been based on hearsay but nevertheless have been relevant to the question—some have been worse hearsay than others, but here is a man [fol. 702] who heard the conversation—

The Court: In the first place, you have laid no foundation at all for this thing, whether this statement was made by the president over a cocktail in a bar, or in a speech over nationwide television, or in a sales conference. I haven't the slightest idea where it was made.

Mr. Greenberg: All right. I will lay the foundation.

The Court: Let us first find out what the conversation was about and where it took place.

Mr. Greenberg: I thought I would expedite it, but I will ask it in the next question.

Q. Do you recall around the time of your reorganization whether there were meetings with the president?

A. Yes.

Q. Did he say certain things to you people?

A. Yes.

Q. And where were they said?

The Court: To what people, to the staff, to the board of directors?

The Witness: To everybody, as far as I know.

Q. Did he refer to plastic jars in any way?

A. In the conversation that he had with me he referred [fol. 703] to plastic jars.

Q. And what did he say?

Mr. Hughes: I object to that as hearsay.

The Court: I will overrule the objection.

Q. What did he say to you?

A. He made, or perhaps backed-up my discussion when I was saying, "Well, if a plastic container is a better

mousetrap or a better thing to use, we want to be the first with it."

Q. And what did he tell you?

A. He told us to continue to investigate it.

The Court: Did you carry on investigations in plastic as a result of that conversation or was that an incident in the line of your investigation?

The Witness: It was an incident in the line of my investigation.

Q. Directing your attention now to the glass container companies which supply you, you mentioned that Hazel-Atlas has been one of your suppliers of glass containers.

A. Yes, sir.

Q. Have the glass container companies in their discussions with you or your representatives attempted to meet the activities of the plastic container companies? [fol. 704] Mr. Hughes: Your Honor, I object to the form of the question.

The Court: Yes, I think that calls for a conclusion. What have the glass people done, if anything?

The Witness: What have they done to meet what? I don't quite understand the question.

The Court: What have they done, if anything, with reference to offers or attempts to sell you plastic?

The Witness: Well—

Mr. Greenberg: Glass, your Honor.

The Court: Glass?

Mr. Greenberg: Yes.

Q. What have the glass container companies done?

The Court: What have the glass container people done, if anything, as far as you are aware, in contacting your company with reference to attempts to sell you glass containers?

The Witness: They have pointed out that glass has the advantage of visibility. They obviously pointed out that it is cheaper in most cases and was in almost each instance. In many instances they pointed out that the life of the product was extended for a longer period, that if it was in glass, there was less loss of perfume, et cetera.

[fol. 705] Q. Has the differential in price between glass containers and plastic containers narrowed in that time?

A. Yes. In the very beginning, as the price of molding powder has come down.

Q. And these prices have been going down, plastic container prices?

A. Plastic container prices have been going down, yes, sir.

The Court: Have glass container prices been going down too?

The Witness: No.

The Court: Let us say a year ago. Can you give us a rough comparison between the price of plastic containers and glass containers, the price differential, in very general terms?

The Witness: Well, if I took a parallel price and if we are talking about a plastic bottle, which I assume we are now, versus a glass bottle—this is going to be rough—I would say that the plastic container is perhaps twice as expensive.

The Court: That, of course, varies between types and sizes and shapes and all the rest?

The Witness: That's right, there is quite a variable.

[fol. 706] Q. Assuming that to be true, sir, when you consider the freight differential—

A. Oh, the freight differential would mean that the differential of a 2-to-1 ratio would be raised a little because the plastic is lighter than glass for comparative sizes. It might bring it to a 3-to-1 ratio let us say, perhaps.

Mr. Hughes: Is what you are saying that that would be about 33-1/3%?

The Witness: Yes. But I have some records—

Q. Would you refer to your records and see if you can refresh your recollection.

A. I might do a little better. I have some cost figures here.

The Court: All right. You say you have some cost figures?

The Witness: Yes.

The Court: Suppose you take a look at your cost figures

over the luncheon recess, Mr. Holloway and give us your answer after lunch.

We will now take a recess until ten minutes after two.

(Recess to 2:10 p.m.)

[fol. 707]

AFTERNOON SESSION.

The Court: All right, gentlemen.

GEORGE A. HOLLOWAY resumed.

The Court: How much longer will you be with this witness?

Mr. Greenberg: Just a few minutes, your Honor.

The Court: Very good.

Direct examination continued.

By Mr. Greenberg:

Q. Sir, if you recall, we left the proceedings at a point where you were supposed to refresh your recollection from your records as to the comparative costs of glass and plastic containers. Have you done that?

A. In a very casual way because I do not have enough information to really be extremely specific.

Q. Then I won't press you on it.

The Court: What we want here is a fairly general idea of the differential. We are not looking for precise figures at the moment. Can you give us a general idea of the differential?

The Witness: Well, let's say that the plastic might start off being between two and three times—it depends so [fol. 707a] much, as your Honor pointed out, on the shape and everything else, like asking how high is the moon. It would be two times more on a delivered basis to use and it might get as high as three times; it would cost anywhere from two to three times the cost of a glass container landing in our plant, but that can vary.

The Court: All right.

[fol. 708] Q. Sir, when you consider the freight differences, does that ratio vary?

A. In certain containers it could come way down. In other words, when you are getting into these linear plastics, we don't have to use them, but the detergent people at the moment are, and you are getting way down, much closer to glass in cost. We don't happen at the moment to be using any of those.

Q. Sir, directing your attention to the activities of the aerosol tin can manufacturers, would you tell us whether they have attempted to sell aerosol cans for any of your products?

A. For any of our products?

Q. Yes.

A. Yes, we are using aerosol tin containers now for our Pertussin room vaporizers.

Q. Yes, and have they offered their container for other products as well, hair preparations?

A. Yes.. They have suggested hair preparations. For instance, any number of people have brought in samples that they have taken of our product and packaged it in aerosol and sold it in a tin can.

Q. Now, would you identify the companies, the principal companies that have come in to see you about using aerosol [fol. 709] cans?

A. I probably could.

Q. Pardon?

A. I think I could. There would be Continental Can, the American Can and probably Crown Can would be the three main ones. There may be some others of a minor nature to come in also.

Mr. Greenberg: Thank you very much, sir.

You may cross-examine.

The Court: All right, Mr. Hughes.

Excuse me, Mr. Hughes.

By the Court:

Q. Incidentally, where do you get your present aerosol cans from?

A. One is Continental, on this room vaporizer, and on this aerosol home shaver, it is Crown. It could be Ameri-

can, could be one of those other two. It could be Continental on the room vaporizer.

The Court: Thank you.

Cross-examination.

By Mr. Hughes:

Q. Mr. Holloway, does your company have more than one source of supply, container source of supply, for each of the products that you use?

[Vol. 710] A. In almost every case we have at least two and anywhere up to eight or nine.

Q. Does Owens-Illinois Glass Company make opal glass?

A. If they do, I don't know of it. I think not.

Q. How many companies would you say are engaged in the manufacturing of toiletries and cosmetics?

A. I honestly don't know that figure. It must run into the hundreds.

Q. How many companies would you say are engaged in the business of manufacturing medicine, health and pharmaceutical products?

A. There again I am really not qualified to say. I assume it runs into hundreds.

Q. Approximately how many toiletries and cosmetic products are currently being sold commercially in the United States, taking into account all the companies in the United States?

A. There again, I am sorry, I honestly am not qualified to say, but I assume it runs into the hundreds and hundreds.

Q. Thousands perhaps?

A. Probably.

[fol. 711] Q. And approximately how many pharmaceutical products are currently being sold in the United States?

The Court: I take it the same answer?

The Witness: Same answer.

Q. Now, you don't have any knowledge, do you, of the dollars and units of containers used by other toiletries, cosmetic and pharmaceutical companies?

A. I do not.

Q. In your direct examination, of all the products that you alluded to, and of all the products that were listed in these exhibits that were put in evidence, am I correct that there were four which move in plastic containers?

A. (No response.)

Q. Well, there was the cosmetic cream; right? There was Angel Skin Lotion; is that right?

A. Yes.

Q. A plastic roll-on deodorant?

A. Yes.

Q. And a spray deodorant?

A. Yes.

Q. Can you think of any others of all the products that you have mentioned or listed in these exhibits?

Mr. Greenberg: May I have the question read back, your Honor?

[fol. 712] The Court: All right, you may read the question, Mr. Reporter.

(Question read.)

Q. (Continuing) Which move in plastic containers?

Mr. Greenberg: Are we talking about this witness's company, your Honor?

The Court: Certainly we are talking about this witness's company.

A. Yes, and this is an afterthought. We have recently bought a little company called Aziza, that is in the eye makeup business, and they have—these are very minor quantities—they have got some Imco jars for one item and they have got some Colt jars for another—I just thought of it now—just very small in terms of numerical volume.

Q. Now, the Angel Skin Lotion, that moves in another type of container as well, does it not?

A. As well as what?

Q. As well as plastic.

A. Oh, yes, the main business is in glass.

Q. And would you say that the amount that moves in plastic containers was significant?

[fol. 713] Mr. Greenberg: Your Honor, I will object.

The Court: Overruled.

A. I don't know. Insignificant? I don't know how to answer that.

Q. Well, insignificant in relation to the amount that moves in glass?

A. It is very small as compared with the glass, and we only bring it out in this container, let's say, on a special occasion, once every year or two, as sort of promotion for a comparatively numerically small quantity, fraction of it.

Mr. Handler: Could the witness keep his voice up, please?

Q. Now, Mr. Holloway, isn't it a fact that the number of units of your purchases of plastic containers in relation to your total purchases of units of all containers is an insignificant amount?

A. May I ask for a clarification of "insignificant amount"?

The Court: Let's change that "insignificant" to "very small."

The Witness: Yes, it is very small.

[fol. 514] Q. Would you say that it was 1 per cent or about 1 per cent?

A. Of all containers purchased, you are asking now?

Q. Yes.

Mr. Greenberg: Your Honor, are we including shipping containers?

A. I would say 2, 3 per cent.

The Court: Wait a minute.

Mr. Greenberg: If the Court please, we have the use of the term "containers." It could include cardboard boxes around the container.

The Court: No, we all know what we are talking about, Mr. Greenberg. We are talking about containers in which the products are packed or bottled and in which they were used by the ultimate consumer.

A. I can only give a guess, but I will say that at tops it would probably be around 3 per cent, but it might be 2, might be 1. I honestly, without getting some figures, couldn't nail it down closer to that, I don't think.

Q. No more than 3 and in the range between 1 and 3, would you say?

A. That is a guess, but I think it is a fairly accurate guess.

[fol. 715] Q. Now, did I understand you to say that you used glass aerosols?

A. Yes, we do, in the Matchabelli line.

Q. Is the market for the use of them an extremely limited market?

A. Yes, it is.

Q. And is there any reason for that? Well, are they very high cost? Let me put it to you that way.

A. Yes, 7 cents apiece just for the coating going around the glass, to limit it shattering.

Q. Is that a limiting factor on their use?

A. Yes.

Q. Isn't it true that your company has no cream other than Aziza or Azeza, in plastic?

A. On the market today? Yes.

Q. Mr. Holloway, I show you Exhibit 355 and call your attention to the aerosol can on the face of that exhibit; do you observe that?

A. Yes.

Q. Can you tell me how you classify this, whether as a household article, that is, this medicated room vaporizer, or would you classify it as a cosmetic?

[fol. 716] A. Not as a cosmetic, definitely.

Q. How about a toiletry?

A. No.

Q. A chemical?

A. No.

Q. Pharmaceutical?

A. Yes, in that area, or more in the pharmaceutical area. It is not a room deodorant, in other words.

Q. Is it a household article?

A. No, it is used for the shrinking of membranes that are set up by a cold, say, a child's cold. Definitely of therapeutic value.

Q. You say it is a pharmaceutical?

A. Pharmaceutical area.

Q. Now, you have told us of the approximate percentage of your products that move in plastic containers, and I

ask you whether there are any disadvantages in the use of plastic containers?

A. We have tested practically every product we have to see will it be compatible with a plastic container, and in many cases the answer is definitely no; and I am talking about a variation of plastics from linear polyethylene up and down the scale.

[fol. 717] Q. Yes?

A. We have also tested lined bottles, trying to overcome some of those disadvantages. But product compatibility would be one of the main reasons, I would say.

Q. Can you think of any others?

A. Well, it does come to container compatibility with the product in certain other areas, where you would get a collapsing of the bottle as action is taking place. Also, it is more porous and you can have loss of perfume; you can have oxidation of product as some of these plastics can deteriorate almost by osmosis.

Q. Is there a factor known as pharmaceutical elegance? Have you ever heard that expression?

A. Pharmaceutical elegance?

Q. Yes. Cosmetic elegance, have you ever heard that expression?

A. Yes, that I have heard.

Q. All right, let's go to cosmetic elegance. Would you say that plastics have less cosmetic elegance than other types of containers?

A. Are we talking about squeeze bottles? As I want to contrast that with jars, is why I wanted to ask the question.

[fol. 718] Q. Let's take jars.

A. Some jars—I know certain of our competitors, let's say, the higher-priced lines, like Elizabeth Arden's, do use some of these plastic-coated jars.

Q. You do not?

A. Other than this Aziza area.

Q. And, generally speaking, plastic is more expensive than glass, is it not?

A. I think glass, generally speaking—for a comparable item?

Q. Yes.

A. Although I know that today when you get into the detergent field, apparently those containers are very close

to glass. I know that from hearsay. We are not dealing in it. But in general I would say for the items in which we try to get a parallel size jar for Aziza out of glass, let's say, versus this plastic one, we would pay more for the plastic one.

Mr. Hughes: No further questions.

The Court: Any further questions?

Mr. Greenberg: Yes, I have just a few questions your Honor.

Redirect examination.

By Mr. Greenberg:

Q. Sir, ten years ago how many products of [fol. 719] your company were compatible with plastic containers? I will change that question around. Haven't there been advances in types of plastics, vinylite things of that nature, which have made more of your kind of product compatible with plastic containers over the years?

A. More compatible?

Q. Yes, sir.

A. Yes, but not completely compatible in all cases. A question of degree in many cases.

Q. Right, but the plastic container companies that you mention are working on this problem; correct, sir?

A. Oh, yes.

Q. And they are working very hard on it; right, sir?

A. I assume so. I hope so.

Q. Now, ten years ago, sir, were you aware of what the price of plastic containers were?

A. Yes.

Q. And were they extremely high compared to—

Mr. Hughes: Your Honor, I object to this. It is repetitious.

Mr. Greenberg: Withdrawn.

[fol. 720] A. Yes, they were.

Q. Sir, are you considering—and answer this in a general way—are you considering marketing other products in plastic containers in the near future?

A. If you mean considering, we are testing all products

in plastic that we have and trying it with the new plastics as they come along, to see if they have an application for us. We do not have any immediate thing that we are coming out with, which is in a plastic, if that is what you mean.

Q. Sir, are you aware of efforts by raw material suppliers and producers of glass bottles to reduce the cost of the polyvinylchloride coating around the aerosol glass container?

A. Yes.

Q. What types of activity are they engaged in to do that, in a general way?

A. I don't know that I am qualified to say, but I assume they are working with the plastic companies, trying to see if they can't get down to, one, either lower cost of powder, or, two, either thinner coatings or more mechanized method of application of these plastic coatings around the bottle.

Q. And you notice? You have heard this?

[fol. 721] A. Yes.

Mr. Hughes: Well, your Honor, he said he didn't know, he assumed.

The Witness: Well, I have not been there, I haven't been there when they have been talking with their suppliers, but I know from my conversations in the field.

By the Court:

Q. I take it in the trade generally there is discussion of this subject, is there, from time to time?

A. Yes. Can we get the cost down on this coating? It is too damn high.

Mr. Greenberg: May I have just a moment, your Honor, to confer?

Q. Sir, you stated that anywhere from 1 to 3 per cent of your containers were represented by plastic containers; did you say that?

A. Yes. That is an estimate.

Q. What did you mean when you said "containers"?

A. Well, what I meant was, I added up all, as near as I could guess it in a rough way, all the hair tonic bottles we use, all the vaseline petroleum jelly jars, all the Pons

cream jars we use, all our skin lotions, all the big mass market items, where they happen to all be in glass. —
[fol. 722] Q. Right now.

A. So then I tried to compare that against the several items that he mentioned, and unitwise I was guessing that somewhere between 1 and no greater than 3 per cent. That is all I did.

Q. Now, five years ago, can you estimate that percentage, just estimate it?

Mr. Hughes: Well, I object to that.

Q. Can you estimate it, sir?

A. I can estimate, and I would say it would be lesser still, that there would be less plastic used, because there is one bottle that we have sold more stuff, I mean, part of that is acquisition, you see, companies we didn't have.

Mr. Greenberg: All right, no further questions.

Mr. Hughes: No further questions.

The Court: Thank you, Mr. Holloway.

(Witness excused.)

Mr. Hughes: Your Honor, as you recall, we had no cross-examination of Mr. Hellrung, but I would like to recall him to ask him—he is not here.

The Court: I think Mr. Hellrung has departed, if I am not mistaken.

Mr. Hughes: Well, I think he will be back.

[fol. 723] The Court: Well, if he comes back you may recall him for questions.

Mr. Hughes: One question, yes.

The Court: Next witness.

Mr. McManus: Dr. Wishart.

ARTHUR W. WISHART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Wishart, by whom are you employed?

A. Knox Glass, Incorporated.

Q. And what is your position with that organization?

A. President of the company.

Q. And how long have you been president of Knox Glass?

A. Since October, 1954.

Q. And prior to 1954 were you associated with the glass container industry?

A. No.

Q. So your knowledge of the glass container industry is limited from 1954 to date.

A. That is correct.

The Court: Tell me at the outset, Dr. Wishart, what is [fol. 724] the gross volume, what is the total volume, approximately, of your company?

The Witness: Last year it was approximately \$21½ million dollars net sales.

Q. And how many plants does your company have?

A. We operate nine factories.

Q. And where are they located?

A. They are located, one in Palestine, Texas; two in Jackson, Mississippi; one in Baltimore, Maryland; one in Danielson, Connecticut; three in Western Pennsylvania and one in Gas City, Indiana.

Q. Now, I don't like to skip around, but could you give me your background prior to 1954, Dr. Wishart?

A. Prior to 1954 I was associated with the Westinghouse Electric Corporation in Fairmount, West Virginia, as manager of their glass manufacturing division. Before that—that was for a period of about 1951 or '2 to 1954. Prior to Westinghouse I was vice-president of operations of the McKee Glass Company, in Jeannette, Pennsylvania, and that was for about two or three years. Prior to that with Corning Glass Works, Corning, New York.

The Court: So your business experience has been very largely in the manufacture of glass in one form or another? [fol. 725] The Witness: Yes, sir; that is correct.

Q. You are primarily in the manufacture of flat glass or tubes; is that correct?

A. No. Prior to the Knox experience, with Westinghouse it was in the manufacture of tubing, glass tubing, and in the area of glass bulbs. Part of that with McKee, in a rather broad line of what is known in the trade as press ware, lighting ware, some tableware, that sort of thing. Part of that with Corning as a plant manager at two or three Corning locations, optical glass, a general line of press ware, tableware. Prior to that with Corning in the research and development areas of the glass business.

Q. I see. And prior to coming with Knox Glass Company, were you in the technical end of the business, Doctor?

A. Yes. I began work in the glass field with Corning, in the research department and followed that with activity in the glass technology department, in the technical end of the business.

Q. And you have a doctor's degree, Doctor?

A. Yes, sir.

[fol. 726] Q. And that is in what field?

A. Physical chemistry and physics.

Q. Now, you listed your glass plants. Could you tell me the area of the country that your company services, normally?

A. Generally, we sell in almost all areas of the country east of the Rockies.

Q. You do not sell on the West Coast?

A. Not in any appreciable quantity. We may make an occasional shipment to the West Coast, but very minor.

Q. At the time that you were working for Corning did you conduct experiments in what a layman might call increasing the tensile strength or hardening of glassware?

A. Well, not so much experiments in that area as manufactured products treated in that way for sale.

Q. And the purposes of these experiments were to do what?

A. Again I say—

The Court: He said he was not experimenting primarily.
 The Witness: Not experiments.

Q. I am sorry.

[fol. 727] A. Primarily in the manufacture of glassware so treated, and the purpose of the treatment was to import greater mechanical strength to the glass articles so treated.

Q. Have you carried that knowledge over into the company you are presently with?

A. Well, I believe I have carried the knowledge, but we have not adopted the practice of that sort of treatment of glass containers.

Q. Is your company, if you don't mind telling us, at the present time attempting to increase the strength of glassware?

A. We are very definitely interested in accomplishing that, and we have some ideas and thoughts that we believe may lead to an actual increase in the strength of glass containers.

Q. Does your company have a marketing department, Dr. Wishart?

A. We have people engaged in marketing activities, that is, we don't call it a marketing department, but we do have people that do that kind of work.

Q. And their duties are the normal duties of marketing the products that you sell?

A. Well, they are somewhat more than simply a [fol. 728] sales kind of activity. They involve surveys of market potentials, some activities in the area of competitive products, interest on the part of customers in our product. It is more than just a sales organization, but it is marketing studies and that sort of thing.

Q. They attempt to expand the market in which glass containers are sold?

A. Not as much as that, as this sort of thing: For example, if we have an interest in locating a factory in a new area in which we are not currently located, in a market area, the marketing people would make market studies for demand for glass containers in that area. That would be useful in determining the desirable location of a new factory.

Q. Do these people also study usage of competitive containers?

A. Well, I am sure that they must get into the fringes

of that activity. I am sure they are aware of competitive materials and the usages. I don't know to what detail they get into these things.

[fol. 729] Q. You say you don't know of your own knowledge?

A. No. Let—well, it would be rather difficult to tell you just what I do know. I don't know a great deal of detail.

Q. The marketing department is the one that would have the detail on the particular specific usages of your product?

A. That's correct.

Q. You would know, it would be your job to know, whether your product was being sold under a beer-classification or under a household and chemical-classification? You would know that, wouldn't you?

A. I would know generally, but I of course would not know all of the details, no.

Q. You wouldn't know if the product that your company used specifically, you wouldn't know if the product your company was selling was being sold for a certain type of toiletry?

A. I likely would not. There may be exceptions where I might have specific knowledge of a particular account.

Q. That is the duty of your marketing department?

A. Yes, sales and marketing.

Q. And could you estimate, sir—you gave his [fol. 730] Honor your sales—what is your approximate position in the glass container industry, overall, one, two, three, four, five?

A. Well, we vary from about No. 4 to, I believe, No. 6, and one year we are likely to be—have been, we believe, No. 4 spot and perhaps the next year the No. 5 or No. 6, so today I am not sure just which position it is, between 4 and 6.

Q. Now, when you first went with your company, do you know approximately what position you held in the glass container industry at that time?

A. Well, at that time we were around \$26 million in sales, and it may have been \$26.5 million, but as to the position, I am not sure.

Q. But you have made quite a substantial increase in your sales volume under your direction; is that right, Dr. Wishart?

A. Yes, we have.

Q. And what type of glass-forming machinery does your company have?

A. We operate a number of different types of glass-forming machines, the WD machine, which is rather much a Knox development; what we call the JK machine, which is an adaptation of a Miller-type JP machine.

[fol. 731] We operate Lynch machines; we operate JP machines, Miller machines. We operate some IS machines.

Q. I don't want the specifics, unless you want to tell me, but could you tell me approximately what percentage of your machines are Hartford IS machines?

A. Rather small. I don't know the exact percentage, but apart from our Buck plant in Baltimore, out of the other eight factories we operate perhaps two or three or four Hartford-type machines.

Q. And with the other equipment, other machines, you have managed to increase your sales over the past six years from around 26 to 42 million?

A. Yes.

Mr. McManus: Your Honor, those are all the questions I have of Dr. Wishart.

The Court: Mr. Hughes?

Mr. Hughes: Yes, sir.

Cross-examination.

By Mr. Hughes:

Q. Doctor, your company makes no closures of any kind, does it?

A. No.

Q. Manufactures no plastic of any kind?

A. No, sir.

[fol. 732] Q. The only kind of products you make are glass containers; is that correct?

A. Yes.

Q. Now, would you say that most of your customers have more than one source of supply for their glass containers?

A. I would guess that is so. I don't know specifically, but I would estimate that that is so, or judge that it is so.

Q. Would you say that competition in the glass container industry is keen and vigorous?

A. Yes, I would.

Q. Do you equalize freight with any can manufacturing plant?

A. No, we do not.

Q. Do you equalize freight with any plastic container manufacturing plant?

A. We do not.

Q. Is the location of any can plant a factor with you in the location of any of your glass container plants?

A. No.

Q. Is the location of any plastic container factory a [fol. 733] factor with you in the location of your glass container plant?

A. No.

Q. Or any of them? Now, you do not offer your glass containers at prices below your regular prices to meet prices quoted for cans in any specific situation do you?

A. We do not.

Q. And you cannot charge a higher price than Owens-Illinois for the glass containers that you sell, can you?

A. Not to my knowledge.

Q. Now, what are your elements of cost in the manufacture of your glass containers?

A. Well, labor, raw materials and fuel, cartons, freight, delivery costs, material costs. I think those are the principal elements of cost.

Q. And of those elements, about what percent would you say goes into the labor cost, what percent of the total cost is for labor?

A. Well, if you are speaking of all labor, not only direct labor—do I understand you are including all kinds of wages and salaries?

Q. Yes.

A. I would say about 30 percent.

[fol. 734] Q. I meant to ask you this, too. You do not offer glass containers at prices below your list price to meet prices quoted by plastic manufacturers in any specific situation, do you?

A. No, sir.

Q. Now, can you again tell us quickly the kind of machines that you have, glass-forming machines?

A. WD machines, JK machines, JP machines, Lynch machines, IS machines.

Q. The IS machines are the Emhart machines; is that correct?

A. That's correct.

Q. Will you say that the IS machines are more efficient than the other types of machines?

A. I would say that depending on the Ware types produced, that the IS machines—and again I am thinking of five- and six-section machines rather than the four-section IS—I would say generally the IS machines are more efficient than the other types of machines that we use for everything but larger and narrow-neck bottles, everything but our WD machine.

Q. Doctor, you took charge of the affairs of Knox Glass in 1955, was it?

A. 1954, October 1954.

[fol. 735] Q. 1954. And you are generally familiar with your sales volume and profits from 1955 through 1959, are you not?

A. Yes, sir.

Q. Now in 1955 were your sales approximately \$28 million?

A. That's correct.

Q. And was your profit that year approximately \$701,000?

A. That's correct. That is after taxes.

Q. And in 1956 were your sales approximately \$30,240,000?

A. I believe so.

Q. And were your profits after taxes approximately \$878,000?

A. I believe that is correct.

Q. In 1957 were they \$32,699,000 approximately?

A. I believe so.

Q. And were the profits approximately \$814,000?

A. I believe that is correct.

Q. In 1958 were your sales approximately \$36,808,000?

A. I believe so.

Q. And were your profits approximately \$1,248,000?

[fol. 736] A. That's correct.

The Court: One million—

Mr. Hughes: \$1,248,000.

The Court: I see.

Q. And in 1959 were they approximately \$42,600,000?

A. That's correct.

Q. And your profits approximately \$1,437,000?

A. That's correct.

Q. Now, since you have been in charge of the affairs of this company, has the company made any additions and improvements to plants and equipment?

A. Yes, sir.

Q. And can you briefly tell us, if you can recall, what those additions and improvements have been?

A. Yes. We have—

Q. And approximately when.

A. We have added a furnace and two machines and additional building space at Knox, Pennsylvania, for the production of—well, we are currently using that for the production of amber glass. We put it in, at the time we installed the furnace and additional machinery, we used it for the production of emerald green glass. That was about two or three years ago. I am not sure exactly regarding the date.

[fol. 737] And about that time or a little later we added a furnace and two fabricating machines and some additional building space at our Palestine, Texas plant for the production of amber glass. That was a little later, perhaps two years ago.

A year or more ago we built a complete new glass plant, glass container manufacturing plant, at Danielson, Connecticut.

We are currently working on a building that is currently under construction, a new glass container factory, in Atlanta, Georgia, or in the environs of Atlanta.

Q. Does that cover it?

A. Yes. There is one other thing. We purchased a factory in Baltimore within the last six or nine months.

Q. And you are doing some modernization of that?

A. We have done some modernization and plan to do more.

Q. You do not make opal glass, do you?

A. No.

Q. You could make opal glass if you chose to do so, couldn't you?

A. I am sure we could.

[fol. 738] Q. Dr. Wishart, if you chose to go into the manufacture of closures, you could do so, couldn't you?

A. I would assume so.

Mr. Hughes: That is all your Honor.

The Court: What about the closing machinery business, that is, the capping machinery to go with closures?

The Witness: Well, I would expect that there might be opportunities to purchase existing companies, for example, who have that kind of machinery.

By the Court:

Q. Supposing you were not purchasing one of those companies or supposing there were no existing companies available, would you feel that there would be great difficulties in the way of your going into that part of the business if you decided that it was for the best interests of your company to do so or if you wanted to do so?

A. Well, I am afraid that I cannot answer that, your Honor. I don't know just what the limitations are in the way of purchasing that type of equipment.

Q. You just do not know?

A. No, sir.

Q. And you have not gone into it?

[fol. 739] A. That's right.

The Court: All right.

Redirect examination.

By Mr. McManus:

Q. Dr. Wishart, are your glass containers normally sold on a delivered price basis?

A. Yes, sir.

Q. And they would be delivered at the customer's plant?

A. That's right, freight included.

Q. Does your company sell in the various zones where there are free delivery zones?

A. At one time there were free delivery zones but I am

not sure how many of those free zones still exist. I think that they have gradually been eliminated. There may be some but I am not sure.

Q. You testified that you do not equalize freight with can container companies.

A. That's right.

Q. If you sell at a delivered-price basis you do not equalize freight with any glass company plant either, do you?

A. I think the answer would be no. We simply pay the freight to the customer's door.

Q. So you do not equalize freight with either [fol. 740] can, glass or plastic companies?

A. I am not conscious of it; not that I know of.

The Court: Dr. Wishart, let me ask you this. As an example, let us suppose you are selling some sort of glass jars in suitable quantities to a customer in, let us say, Omaha. I presume that you would take those jars from the plant closest to Omaha that manufactures that item.

The Witness: That's right.

The Court: And when you sell it to the customer in Omaha, what would you do; would you take your list price and add a differential for the freight or would the customer in Omaha get the very same price as the customer in the town where the factory was located?

The Witness: That's correct, he would get the very same price.

The Court: He would get the very same price and you would absorb it?

The Witness: We calculate our costs with an average freight factor in the cost, so that built into our price list are our freight costs to an average destination, so that whether the customer had a factory in the same town as ours or whether he had it at some distance, they would pay the same price.

[fol. 741] The Court: They would pay the same price?

The Witness: Yes, sir.

• By Mr. McManus:

Q. Do you know of your own knowledge whether this is generally true throughout the glass container industry?

A. I believe it is.

Q. Could you give us an estimate of what percentage of your glass containers are delivered in corrugated shipping containers, approximately?

A. Well, I would say that basically all of them are delivered in corrugated containers.

Q. Over 90 percent?

A. Yes.

Q. Could you tell me approximately what cost the corrugated shipping container represents to the selling price of the glass container?

A. Approximately 20%.

Q. In testifying about the types of machines that you have, Doctor, and I take it you are very familiar with them, were some of those machines Miller machines?

A. Yes, they were. Some of our machines are Miller-type machines.

[fol. 742] Q. So you have some Miller machines?

A. Yes.

Q. Are they wide-mouth machines?

A. Yes.

Q. And do you have some Lynch machines?

A. Yes.

Q. And what are they basically?

A. Basically they can either be used—we use them, I would say, largely for the narrow neck type.

Q. Then you have some of your own modified machines also?

A. Yes, we do.

Q. Recently has your company made any studies or have you given serious consideration to entering into the plastic container industry?

A. Yes, we have conducted some investigations along those lines and given some thought to it.

Q. And what have been the factors that have caused you and your company to consider the plastic container industry?

A. Well, we felt that we have a sales organization that could very conveniently sell a line of plastic containers. I think that that was the idea that got us basically interested [fol. 743] in it. We have a rather extensive sales organization and we felt that that type of product might fit into our sales organization.

The Court: It would sort of round out your line?

The Witness: That could be, too, that we have an interest in having a more diversified line.

Mr. McManus: Thank you, sir. That is all.

Recross-examination.

By Mr. Hughes:

Q. Dr. Wishart, do you give your customers an allowance for back hauls?

A. In some cases.

The Court: Tell me what that is, Dr. Wishart.

The Witness: Well, that is a case wherein the customer operates his own trucks and he may happen to have a truck that delivered his product in an area and then he picks up a lot of our containers—

The Court: And you give him sort of an allowance?

The Witness: A freight allowance for that.

Q. And are they equalized with your glass container plants?

A. Pardon me?

Q. They are equalized from your glass container plants, are they not?

[fols. 744-746] A. I don't know that that is exactly so. I am not sure that I understand you. What we do is take the freight rate—

The Court: In that case you would take the nearest glass container plant—

The Witness: I am not sure just what Mr. Hughes is getting at here.

Would you state that again.

The Court: You had better clarify that, Mr. Hughes.

Mr. Hughes: Yes, I will, your Honor.

Q. Are these freight allowances equalized with the nearest glass container plant or other glass container manufacturers?

A. No, sir.

Q. They are not? In what respect are they equalized? How do you work out the equalizing process?

A. Well, we don't work that out in the back hauls. We

allow—generally, I believe it is the normal earload freight rate, from our factory to our customer's location, and that is the allowance that we give generally for the back hauls.

The Court: All right, Dr. Wishart. Thank you very much.

(Witness excused.)

[fol. 747] CHARLES OLIN BALL, resumed.

The Court: Dr. Ball, you have already been sworn and you remember you are under oath.

The Witness: Yes, sir.

Mr. Johnson: Your Honor, I would like to have these [fol. 748] documents marked for identification: First is a volume entitled "Elements of Food Engineering, Volume 2."

(Marked Defendants' Exhibit G for identification.)

Mr. Johnson: Second is a volume entitled "Sterilization in Food Technology."

(Marked Defendants' Exhibit H for identification.)

Mr. Johnson: The third is the January, 1960, issue of Modern Packaging Magazine.

(Marked Defendants' Exhibit I for identification.)

Cross-examination.

By Mr. Johnson:

Q. Dr. Ball, I think you testified the other day in effect that substantially your whole active life has been spent in one aspect or another of food technology, is that correct?

A. That is right.

Q. And you have taught food technology for many years?

A. I have taught food technology academically for 11 years.

Q. And you have written numerous scientific works on food technology?

[fol. 749] A. I have.

Q. Dr. Ball, I know you are a modest man, but isn't it a fact that you are generally acknowledged as one of the foremost authorities in the field of food technology in the United States?

A. I have been told that, yes.

Q. And that reputation was achieved in the scientific field of food technology?

A. Yes, sir.

Q. Now, sir, I show you a book entitled "Sterilization in Food Technology," published by McGraw-Hill Book Company in 1957. Did you write that book, sir, in cooperation with F. C. W. Olson of Florida State University?

A. I did.

Q. Dr. Ball, the term "sterilization," without qualifying adjectives, what does it mean to you?

The Court: Do you mean in relation to food?

Mr. Johnson: In relation to anything for the moment.

A. In a strictly scientific sense?

Q. Yes.

[fol. 750] A. It means the destruction of all micro-organisms in material being treated.

Q. In short, it means surgical sterilization?

A. Yes.

Q. Now, are you familiar with the modification of that term as used by an authority by the name of Tanner?

A. Yes.

Q. On page 13 of your book you quote Dr. Tanner as saying:

"Some canning technologists have modified the term 'sterilization' to indicate the bacteriological condition attained in some foods by processing. Since the term 'sterilization' implies the absolute destruction of all living organisms and since this condition may not be attained in some processed foods, the term 'commercial sterilization' has been introduced."

Mr. Greenberg: If the Court please, I would think that the proper procedure would be to show Dr. Ball the book and have him read it rather than listen to the words.

The Court: No, I am going to permit this kind of cross-examination of the expert.

Q. Then you go on to say:

[fol. 751] "Tanner stated that 'commercially sterile' canned food may contain viable spores of a type, such as the thermophilic, which will not develop under conditions that are normally maintained during storage of the food. Some of these spores are so highly resistant that to destroy them by heat one might overcook the food to such an extent that it would be unsuitable for sale."

Do you agree, sir, that some qualification of the term "sterilization" is required in food treatment and that commercial sterilization is an acceptable term for that?

A. It is accepted for the purpose, yes. It is a different connotation than the strictly scientific connotation of the word, but it is spoken of, that is, the term is used in respect to foods that have been treated so that they are commercially sterile.

Q. Am I correct in paraphrasing this to mean that it is the attainment of sterility with respect to the most resistant microorganisms present that would bring about spoilage?

A. That is what the term in that sense would mean, yes.

[fol. 752] Q. Sir, in your testimony the other day you referred to the term "hermetic" and said it was another word for "air tight"; do you recall that?

A. Yes, sir.

Q. Did you mean absolutely air tight, or is it another term which must be qualified?

A. Well, I think you will find that—it is my opinion anyway—that nothing is absolutely impervious to air. If we allow enough time a molecule or some molecules of air will get through almost anything under certain conditions. So it is a qualified term. There are gradations, and one must draw a line of demarcation if he is going to say what is air tight and what isn't.

Q. Yes. Can you get a hermetic seal, as that term is used in food technology, with a crown cap?

A. That I cannot say for sure. I have never worked with crown caps enough to learn that.

Q. In your testimony the other day you used the term "canned foods" and you said that you meant foods that have been sterilized and packaged in air tight containers for storage and distribution. Now, I assume that you meant commercialized sterilization, did you not?

[fol. 753] A. Yes.

Q. Now, will you tell me, sir, what you mean by the term "foods" as you used it in "canned foods"?

A. The term "foods"?

Q. Yes.

A. Well, in discussing the subject in this manner, the term "foods" refers to edible substances that are capable of being spoiled by micro organisms.

Q. Do you include vinegar as a food?

A. Vinegar?

Q. Yes.

A. Yes.

Q. Do you include soft drinks?

A. Well, again, I don't know enough about what is in a soft drink to be sure, but I think it would be included—they would be included.

Q. Do you include beer?

A. Yes.

Q. Do you include coffee?

A. No.

Q. Do you include spices?

A. I would have to qualify my answer there. I wouldn't say for sure.

Q. Do you include dog or cat food?

[fol. 754] The Court: What?

Mr. Johnson: Dog or cat food, pet food.

The Court: Pet food.

A. I wouldn't ordinarily, dehydrated dog or cat food.

Q. But other kinds?

A. Yes.

Q. How about wine?

A. Yes.

The Court: How about whiskey? Hard liquor, generally?

The Witness: I don't think so, your Honor. I don't think that would be destroyed or spoiled by bacteria.

Q. Are you familiar with the term "vacuum packed"?

A. Yes, sir.

Q. What does that term mean?

A. Broadly speaking, it means packing a material in a container which is sealed while under vacuum. But also, if it is a qualified term that you refer to here because it is used in connection with canned foods, it refers to a food in particular form which has a considerable amount of space between the particles, and is—which are not filled [fol. 755] with brine, but that food being closed under vacuum in a container.

Q. Now, if a product is vacuum packed, is it canned, within your definition?

A. Yes, sir.

Q. Can you define for me, sir, the term "pasteurization"?

A. Pasteurization is an intentional destruction of a part of the micro organisms that are in the product.

Q. Now, when a product has been pasteurized, it has been commercial sterilized within the meaning of the term as we define it, has it not?

A. No, sir.

Q. What is the difference?

A. The difference is that there are viable organisms in that food still which will spoil the food under the conditions in which it is held.

Q. Now, Dr. Ball, I am going to give you a list of products and ask you this question:

When the following products are packed in glass containers or metal cans, do you consider them as canned within your definition: mayonnaise?

A. No, I do not ordinarily classify that as canned food. [fol. 756] Q. Catsup?

A. Yes.

Q. Vinegar?

A. Well, I don't know of that ever being packed in cans, but—yes, I would call that a canned food.

Q. Beer?

A. No, I think I would exclude that. 8

Q. Vegetable oils for shortening?

A. I would exclude that, also.

Q. Wet packed pet foods?

A. Yes.

Mr. Greenberg: What was that last one, Mr. Johnson?

Mr. Johnson: Wet packed pet foods.

Q. Syrup?

Mr. Handler: Was there an answer?

Mr. Johnson: Yes.

A. No.

Q. Pickles?

A. Ordinarily, yes.

Q. Juice in concentrated form prepared for freezing?

A. No.

Q. Whole milk?

[fol. 757] A. Whole milk?

Q. Yes.

A. If it is sterilized.

Q. Not if it is pasteurized?

A. Not if it is pasteurized.

Q. Barbecue sauces?

A. Well, my answer would be the same there. If they are sterilized, but not if not.

Q. Coffee?

A. Well, I ordinarily don't regard coffee as a food.

Q. Well, I was referring to canned rather than foods?

A. It is canned.

Q. Maraschino cherries?

A. Well, I would qualify this answer this way:

Maraschino cherries have a preservative. Some foods that are classified as canned do have some preservative, but I would not myself class Maraschino cherries as a canned food, sterilized canned food.

Q. Sauerkraut?

A. Yes.

Q. Olives.

A. Ripe olives, yes.

Q. Not green?

[fol. 758] A. They are preserved by acid.

Q. Peanut butter?

A. Restricting as I have to sterile foods, no.

Q. Fruit preserves?

A. Ordinarily, yes.

Q. Fruit jellies?

A. Same.

Q. Prune juice?

A. Yes.

Q. Now going back to beer, sir, when it is packed it is hermetically sealed, is it not?

A. Yes.

Q. And when it is put on the market it has attained sterility with respect to the most resistant micro organism present that would bring about spoilage, hasn't it?

A. No, that beer is pasteurized, sir.

Q. And what does that mean in practical effect?

A. It means that there still are some viable organisms that would spoil the product under ordinary conditions.

Q. Isn't that true with respect to peaches, also, having in mind our definition of commercial sterility and the necessity for that?

[fol. 759] A. It is not true of peaches, according to ordinary, to usual belief. I don't think anybody knows whether or not there are any viable organisms in peaches or acid products of that kind, because that question has never been studied exhaustively. It is because it hasn't been necessary. Peaches keep, but nobody knows whether they are absolutely sterile or not.

Q. Now, if you don't regard beer as canned, sir, what would you call the product?

A. Beer in cans, beer packaged in cans.

Q. All right, sir. No broad term for the process?

A. No, I think not.

Q. Dr. Ball, would you regard the following products as canned, within the definition you have given: First raisins packed in wax-sealed paper container?

A. No, sir.

Q. Why not?

A. They are not sterile. Ordinarily they are not in such a state that they would be spoiled by bacteria. They are viable bacteria there.

Q. Cornflakes in a wax-sealed paper carton?

A. Now, the question is what again in regard to [fol. 760] them?

Q. Would you regard this as canned, within your definition?

A. No.

Q. Sir, I have in my hand a copy of the Modern Packaging magazine for January 1960. On page 79 of this magazine there is a sentence, part of a sentence, that I want to read. There is a statement that a certain packer packs certain of its products in, and I quote:

"A new and economical smooth wall aluminum foil cup that assures hermetic product protection."

That ends the quote.

Would you say, sir, that that was possible?

A. I would say it would depend upon the thickness of the foil.

Q. But you wouldn't say it was impossible?

A. I think that it would be necessary to have foil of a thickness practically like that which would be referred to as plate, aluminum plate, before you can be sure that it would be hermetic.

Now at page 44 of this magazine, sir, there is an article which says, and I quote:—

Mr. Greenberg: Your Honor, I don't see why the witness [fol. 761] can't see the article. I think there ought to be some identification of the author. He ought to be asked if he knows the author.

The Court: I think that is so. If you are referring to the article, let's have what the article is about, where it appears and who wrote it?

Mr. Johnson: Well, sir, I am interested only in whether this witness will agree or disagree that it is possible.

The Court: Well, I know that may be what you are interested in, Mr. Johnson, but I am interested in knowing at least what the nature of the article you are reading from is. I would ask you to let me know what it is before you read from it.

Mr. Johnson: All right, sir.

The Court: Who wrote it?

Mr. Johnson: The article I refer to was simply headed "Single Service Foil Cup."

Mr. Greenberg: Your Honor, articles of that type are usually advertisements put in by a particular company. If there is no identification of author, it is totally unreliable, and I don't see how we can use it with the witness to impeach him, or for any other purpose.

Mr. Johnson: I was not trying to rely on the article. [fol. 762] I am trying—

Mr. Greenberg: You are reading it into the record.

The Court: All right, the objection is overruled. If he wants to refer to advertisements and ask the witness about them, I will permit him to do so. We have a very broad scope of examination in this sort of situation.

Q. On page 44 of this magazine there is an anonymous article that is headed "Hermetically Sealed Plastic Cup Packages." It contains this statement:

"Hermetically sealed plastic containers and machinery for sealing them are available from Plastomatic. The containers—called Seal-Tainer—are made in pint and half-pint sizes from transparent polyethylene. The lids are a lamination of polyethylene, polyester and saran."

Would you say, sir, that such a container could be hermetically sealed?

A. I don't know enough about making a seal on a plastic container to express an opinion.

By the Court:

[fol. 763] Q. Well, Dr. Ball, am I correct that with respect to a plastic container there would be two problems:

First would be the question of whether or not it could be hermetically sealed at all, and the second problem would be a problem of the permeability after it was hermetically sealed; isn't that so?

A. Yes, your Honor.

In fact, the second problem is the one that—that is, I would feel safer in answering that it cannot be hermetic.

Q. Because of the inherent permeability of the material?

A. That's right.

[fol. 764] Q. Dr. Ball, the ultimate purpose of canning is to preserve foods from spoiling until they are ready to be used, is it not?

A. Yes, sir.

Q. Isn't the same purpose served by dehydration?

A. Yes, sir.

Q. And by smoking?

A. The same purpose?

Q. Yes.

A. I wouldn't say that the same objective is always obtained but that is the purpose.

Q. And by salting?

A. Yes.

Q. And by fermentation?

A. Yes, sir.

Q. And by treatment with sulphur dioxide?

A. Yes, that is a preservative that we use for the purpose of preventing spoilage and preserving the food until it is ready to be used.

Q. And by treatment with propylene?

A. I am not acquainted with the use of propylene.

Q. And by treatment with sodium benzoate?

A. That is commonly used.

Q. By treatment with sugar?

[fol. 765] A. Yes.

Q. By treatment with acetic acid or vinegar?

A. Yes.

Q. By freezing?

A. Well, that is in a different category, because its preservation depends entirely upon the condition of storage.

Q. But the purpose is the same?

A. The purpose is the same.

Q. Dr. Ball, when you talk about canning you are not talking about one single process, are you? In other words, you cannot say about any product that you cook it for 20 minutes and cool it for 17 and that is all there is to it?

The Court: I don't follow that question.

Mr. Johnson: Let me restate it.

The Court: You have me very badly confused on it.

Mr. Johnson: I will try to restate it.

Q. Isn't it a fact that there is a different canning process for practically every canned product?

A. There is a different canning process for every canned product, yes.

[fol. 766] Q. Dr. Ball, would you tell me what is meant by thermal death time?

A. Thermal death time is the time required to destroy a microorganism when it is held at a given temperature constantly.

Q. Is that your definition of it?

A. Yes.

Q. Thermal death time will vary not only with the temperature but with the product, will it not?

A. Yes.

Q. Now, sir, turning to your book, I want to read a couple of paragraphs from page 14, and I wish you would listen to it and tell me if it represents your views today?

The Court: When was the book published?

Mr. Johnson: The book was published in 1957.

Q. "In determining the merits of a process, one must examine it from the standpoint of four factors: (1) economy, (2) quality of product, (3) uniformity of product, (4) sterilization of product.

"It may at first appear in this discussion that we should be interested only in factor 1. In studying processing we [fol. 767] quickly learn, however, that the four factors are inseparable. If the problem of processing involved only the sterilization of foods, it would be an extremely simple problem, solved by choosing for every process a temperature and a time that would leave no doubt as to the destruction of all micro-organisms. Along with the possibility of disregarding quality and uniformity, we should have the possibility of disregarding refinements of retort operation. We should not need to study venting, and variations in temperature with a retort would be of little practical importance.

"There may be a legitimate question as to how much the factor of economy has influenced the development of processing methods in the past, but there is no question but that now the bringing into use of certain new technics is being influenced greatly by considerations of economy.

Promised benefits in quality and uniformity of product are balanced against estimated cost with great deliberation. Observing this, one should say that economy is at least on a balance in importance with quality and uniformity of a product.

"The objective sought in all processing is to ensure sterilization of the food with the least possible impairment of the quality. In order to obtain this objective, much attention must be given to the combination of time and temperature chosen. Some general principles have been learned that are helpful in this connection. For instance, it has been found, with products having the higher rates of heat penetration, that better quality can generally be obtained by processing at a high temperature than can be obtained by giving an equivalent process at a lower temperature. The shortest possible 'coming-up' time also has been found to be advantageous. The latter applies to most products, but is of less importance with those having the lower rates of heat penetration."

Does that still represent your view, sir? Would you like to look at it?

A. No, that's all right. Yes, it does.

Q. Now, Dr. Ball, looking at Government's Exhibits G-317 and G-318, is it not possible to generalize and say that the time required for processing low acid foods in glass containers is always longer than the time required to process them in metal cans?

[fol. 769] The Court: You might refer him to the two exhibits.

Q. These are the two exhibits that I have referred to?

A. Well, one has to define what you mean by the time required to process to answer that. If you use the same length of time to bring the temperature of the retort up to processing temperature, up to the holding temperature, it does take longer for glass containers than for metal cans, yes.

The Court: Can you tell me why that is—I mean simply?

The Witness: Well, the reason is that glass is not quite as good a conductor as metal.

The Court: I see.

The Witness: I am referring now to low acid foods.

Q. And the same is true of medium and high acid foods?

A. Yes.

Q. And, of course, the element of time is an important factor in any commercial operation, is it not?

A. Yes.

Q. Apart from such things as time and temperature, [fol. 770] there are numerous other differences in the processing of foods in glass containers than in metal cans, are there not?

A. Would you repeat that, please?

Q. Apart from the processing time and temperature, are there other differences in the processing of foods in glass containers than in metal cans?

A. Yes; there are.

Q. And some of these are referred to in these books which I showed you, which are Government's Exhibits G-317 and G-318, are they not?

A. Yes. I would say in practice that is true. I could add also that any process satisfactory for glass containers would also be satisfactory for a metal can.

Q. But not vice versa?

A. Not vice versa.

Q. The process of heat sterilization of food in the canning process is accomplished by the transfer of heat to the product, is it not?

A. Yes.

Q. Are you familiar with this treatise, "Elements of Food Engineering," by Milton Parker, published in 1954?

A. I have not read it carefully. I have seen [fol. 771] the book.

Q. Would you regard it as an authoritative work in the field?

A. I am not prepared to say that.

Q. Whether you are or not—

Mr. Greenberg: I am going to object to using this because the witness has stated that he is not familiar with it—

Mr. Johnson: All right, I will simply ask him whether he agrees with a couple of statements in it.

The Court: All right.

Q. "The tincan is the most efficient heat exchanger in effecting the transfer of heat in the thermoprocessing of food."

Would you agree to that statement?

A. That is a pretty broad statement. It doesn't say what it is comparing a tincan with.

Q. All right, sir. Would you agree with this statement: "Glass containers are definitely not as suitable for heat transfer as metal cans."

A. I would say they are suitable for heat transfer but they don't transfer quite as fast.

Q. Dr. Ball, in the commercially canning process, [fol. 772] is it regarded as good practice to put high acid products and low acid products in identical cans?

A. No, not generally.

Q. Do you know what struvite is?

A. Yes, I know what it is.

Q. Will you tell us what it is?

A. Well, it is cholesterol, which is a compound that is commonly derived from fatty materials.

Q. Do you know what hydrated ammonium magnesium phosphite is?

A. No, I don't.

Mr. Johnson: Your Honor, the defendant has no objection to Government's Exhibit G-317 and 318.

The Court: I reserved on those, as I remember.

Mr. Johnson: Yes, that is correct.

The Court: 317 and 318 will be admitted.

(Government's Exhibits 317 and 318 for identification received in evidence.)

Mr. Johnson: That is all.

Mr. Greenberg: I will just be a minute in getting these papers together.

[fol. 773] The Court: Would you like a minute or two to put them together?

Mr. Greenberg: I have practically everything that I want here now.

The Court: All right.

Redirect examination.

By Mr. Greenberg:

Q. Dr. Ball, getting into the details of processing I think we ought to get back to substantial matters and deal with containers and therefore I will discuss some of the types of processes rather than in the abstract. Do you have contamination of syrup after the sterilization process?

A. I think you have to recite the conditions that you have in mind.

Q. Isn't it true that pasteurized products will undergo contamination, the length of which depends upon contamination with micro-organisms that occur after the pasteurization process?

A. That can happen at times, yes.

The Court: Well, let me ask you this: I take it you mean by that or the point of your answer is that there are new micro-organisms that get into the pasteurizing material which cause the spoilage: and that is post-pasteurization, is that correct?

[fol. 774] The Witness: Well, that is the meaning that I had in mind.

Q. Is that true?

A. I beg your pardon?

Q. The statement that I made, is that true?

A. Well, will you ask the question again?

Q. Isn't it true that can and glass containers, as far as thermostatic characteristics are concerned, are as close to absolute perfection as any container can possibly be?

Mr. Johnson: I will object to that as a leading question.

The Court: I will allow it, as a leading question, but I would be interested in hearing Dr. Ball's answer to it because I would be surprised if it isn't "No."

Is that right?

The Witness: In containers that are used for canned products, I think that is true.

The Court: It is not true, is it, Doctor, that it is as close to perfection as they might possibly be?

The Witness: Oh, no, not as close to perfection as it

might possibly be. I didn't understand the question to have that meaning.

[fol. 775] Q. Sir, from your experience in the canning field is there a broader definition of canning than the one that Mr. Johnson used here?

Mr. Johnson: I object to that. Dr. Ball gave his definition of canning the other day. It was the definition I used.

Mr. Greenberg: All right.

The Court: You are withdrawing the question and asking another one, is that right?

Mr. Greenberg: Yes.

Q. The definition that you used was a scientific definition in the context of sterilized foods, is that correct?

Mr. Johnson: I don't understand that question.

The Court: If Dr. Ball understands it he can answer it.

The Witness: No, I don't understand it.

Q. From your experience in the field have you found that there is a broader definition of canning—is there a definition of canning which was put out by the National Canners Association?

A. The National Canners Association concerns itself with foods that are sterilized and then protects it from contamination by a container.

[fol. 776] Q. Is there a broader definition of the term "canning" in the field which includes products which do not come within the definition of the National Canners Association?

Mr. Johnson: I object to the use of "a broader definition."

The Court: I will allow it.

A. I think that depends upon the field in which one happens to be discussing. You might call something else canning and another would not. I don't think that ordinarily the word "canning" is used beyond this point.

Q. Sir, are you familiar with what might occur, for example, to instant coffee after it has been processed if it is not protected against air and moisture?

A. I am not familiar with that product.

Q. How would you classify instant coffee, under what process?

A. Dehydration primarily.

Q. Let me ask you this question, sir: Referring to dehydrated products, is it true that dehydrated foods contain dormant viable micro-organisms which are waiting for an opportunity to grow?

[fol. 777] A. Most hydrated foods do contain such organisms.

Q. Is it true, sir, that such a high moisture condition may occur or result from the use of moisture permeable packages?

A. You mean the problem of possible spoilage?

Q. That is correct.

A. Yes.

Q. Sir, are cans and glass containers impermeable or pretty much so impermeable to gases and moisture?

Mr. Johnson: I object to the question, I believe he is impeaching his own witness.

The Court: Overruled.

A. I believe I am going to have to ask to have the question repeated.

The Court: Yes. Repeat it.

(Question repeated.)

A. As I said earlier, there is absolutely nothing perfect in that regard but glass containers are ordinarily called hermetic containers and for practical purposes of canning impermeable.

Q. For purposes of canning they are impermeable?

A. Yes.

Q. Is that correct?

[fol. 778] The Court: He just said that. You do not have to repeat it.

Q. Sir, are there products which are spoiled by oxidative effects?

A. Yes.

Q. What do you mean by that term "oxidative effects"?

A. Well, oxidation which is usually promoted with and by enzymes which may be in the food. It is a reaction

that ordinarily results in a variation of flavor and appearance of the food.

Q. Would you outline for us the various ways that foods can spoil, the perishability of foods?

A. Well, first, they may spoil from action of the micro-organisms, and they may spoil from oxidative reactions. Under oxidative reactions you can include a rather broad category. There would be rancidity, the production of rancidity, or just a general deterioration of flavor and appearance.

Q. Scaling reactions, is that another manifestation of spoiling?

A. Well, that is a question as to whether that is another one or not. That may be included in the enzymic [fol. 779] spoilage or oxidative spoilage. I don't think scaling has been very well defined.

Q. Sir, after outlining all of these various means of spoilage, are there any containers that you know of at the present time which can be used with the greatest effect to minimize such spoilage?

A. In our experience the two containers that we have been discussing are those containers, tincans and glass containers.

Q. Sir, we had reference to the National Canners Association bulletins which described temperatures and times for various products; is that correct, sir?

A. Yes.

Q. And isn't it true, sir, that in many instances there is identical language in both pamphlets?

The Court: Mr. Greenberg, if there is identical language in both pamphlets, they are in evidence, and it is perfectly simple to point them out.

Q. Are there similarities in processing foods in can and glass containers?

A. There are similarities.

Q. Would you describe them for us, please?

A. The similarities consist of these: that the container is put into a retort, the retort is closed—speaking of pres-[fol. 780] sure-cooking now—the retort is closed and steam is admitted to the retort, producing a rising temperature, up to the necessary temperature for sterilization,

and then it is held at that state for a sufficient length of time, and then the retort is cooled.

The Court: Are you finished, Doctor?

The Witness: Yes.

The Court: Having told us the similarities, are there differences?

The Witness: There are differences in techniques, yes.

The Court: Can you give us an outline of what the differences are?

Mr. Greenberg: In processing—that is what we are talking about, sir.

The Witness: The difference is involved primarily in additional features that must be introduced into a process for glass containers over those that are used for metal containers because of the fact that glass containers used in canning have the side seal, which I think has been described to the Court previously.

These containers will not withstand very much pressure differential from inside out, that is, an excess of pressure [fol. 781] sure inside over the pressure outside, without removing the cap. Therefore a special technique must be employed in order to hold the cap on the container during the process. The one that is commonly employed is to fill the retort with water well over all of the containers that are in the retort, and superimpose on that water air to increase the pressure over what it would be with steam alone, and that excess pressure will hold the cap on the jar.

Another difference comes from the fact that glass will not stand equal heat shock to a tin can, and the temperature must be changed more slowly or it must be changed not over a certain rate, in order to avoid an excessive heat shock which might crack the glass, and that is usually accomplished in the rise of temperature by introducing into the retort water—this water which I spoke of—at approximately the temperature of the glass jar themselves and the food in the glass jars at the beginning of the process. And then the steam is admitted at a specific rate so that there will not be too radical a change in the temperature on the outside of the glass container.

A similar procedure, although in reverse, you might [fol. 781a] say, is done during cooling, by introducing cold

water, mixing it with the hot water somewhat slowly so as not to produce a heat shock on the container.

[fol. 782] Q. Now, sir, do you recall your article on comparative heat penetration studies on jars and cans, published back in 1949 in the Food Technology Journal?

A. My article?

Q. Sir, do you recall back in 1946 when you first started work on the application of temperatures for processing foods in cans, application of that technique to processing foods in glass containers? Do you remember the request from the California State Department of Public Health?

A. Yes, sir. That was in the 20's, I think.

Q. Well, do you remember in September 1946 a committee was formed to outline experiments for determining comparative rates of heat penetration in jars and cans of corresponding size?

A. Yes.

Q. And that was done in conjunction with the Glass Container Manufacturers Institute, sir?

A. Yes, I think it was.

Q. Now, what was your job then; what were you trying to do?

A. Study the—well, just what you stated in reading the name of the committee, study the comparative rates of heating of identical food or identical substances [fol. 783] in glass containers and metal cans.

Q. Sir, have you through the years attempted to overcome any of the problems that might have existed in processing foods in glass containers?

A. You mean in respect to rates of heating?

Q. Everything you have talked about, about the disadvantages or the differences, I should say, the differences between cans and glass containers when it comes to processing?

A. Well, one that I think of that has been introduced, and that primarily by the glass container manufacturers, is reducing the wall thickness of the containers, and that will make possible the more rapid heating than you would have with the thicker wall.

Q. Do you remember when you did some work for White Cap?

A. It was the White Cap in conjunction with others.

Q. And do you recall when that was, sir, just your best estimate?

A. Beg your pardon?

Q. Do you recall when that was, sir, just your best estimate?

A. I think that was in 1948.

[fol. 784] Q. And do you recall the type of work that was being conducted, the purpose for it?

A. Well, the purpose was to try to find a way to prevent perforations in metal covers of glass containers.

Q. And was that process licked?

Mr. Greenberg: Withdrawn.

Q. Was that problem licked?

A. Not by me.

Q. Well, I realize that, but was it licked by White Cap?

A. While I was starting to attack the problem from the standpoint of metal cap and coatings on metal to protect the metal, I was told by White Cap that they had solved the problem otherwise.

Q. Sir, this committee that you are on for the processing of food in glass containers, which is part of the National Canners Association, they get together for the purpose of improving the processing of food in glass containers, is that correct, sir?

A. That's right.

Q. And they hold discussions for that purpose?

A. Yes.

Q. And there are projects which are sponsored [fol. 785] for that purpose?

A. Yes.

Q. Can you give us just a general idea of what kind of projects are being carried on for such purposes?

A. Well, the problems that are being studied today for that purpose are primarily problems, or that are a study of the methods of rapid heating of foods so as to avoid the long periods of rise in temperature that are necessary in conventional processing.

The Court: Is that rather, would you say, the other side of the coin, from quick freeze, in other words, a very rapid

temperature change might avoid changes in flavor and quality that wouldn't otherwise occur?

The Witness: It is, your Honor, analogous to that in a sense, yes, although I think the principal advantage of quick freeze as it has been discussed in the past was from crystal structure, but the faster food can be frozen the less chance there is for deterioration to take place during the process.

The Court: That same problem would be likely to be so if there were rapid temperature change possible, I mean, in heat?

[fol. 786] The Witness: Well, it is so. We have learned that definitely.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, referring now to syrups—

The Court: How much longer are you going to be?

Mr. Greenberg: I don't think too much longer, your Honor.

The Court: Well, I think we will take our morning recess now.

(Short recess.)

By Mr. Greenberg:

Q. Sir, what kind of spoilage can occur after processing of mayonnaise?

A. Bacterial spoilage. I think where spoilage does occur it is generally bacterial spoilage.

Q. And how does this bacterial spoilage occur? What causes it?

A. Well, it can be from bacteria that are not destroyed in the pasteurization treatment, or it can be from other bacterial that may have gained access to the mayonnaise afterwards.

Q. Directing your attention to syrups, what kind [fol. 787] of spoilage can occur after processing for that product?

A. Well, now, do you refer to a syrup like maple syrup?

Q. For example.

A. Or corn syrup?

Q. Yes.

A. The only spoilage that might occur there, I think, would be enzymic spoilage, which would affect the quality somewhat.

Q. Now, enzymic spoilage is sort of triggered or can be triggered by oxidative effects; is that correct, sir?

A. Quite often, yes.

Q. Referring now to coffee; what kind of spoilage can occur after processing of coffee?

A. Spoilage from oxidative effects.

Q. Now I will just refer to one more product, sir. We have had you here for a long period of time.

Peanut butter, what kind of spoilage can occur after processing?

A. Well, that is principally the same type, usually rancidity.

Q. What does that result from?

[fol. 788] A. Well, that is—well, it can be from the effects of oxygen, or it can be from other chemical reactions.

Mr. Greenberg: May I have just a moment, your Honor, to confer with Mr. McManus?

The Court: Yes.

Mr. Greenberg: (After conferring) I have no further questions, your Honor.

The Court: Have you anything further with this witness, Mr. Johnson?

Mr. Johnson: I have one or two short questions.

The Court: Yes.

Recross-examination.

By Mr. Johnson:

Q. Dr. Ball, isn't there a difference in effect between moisture going through a film in liquid form against going through it in vapor form?

A. A difference in effect?

Q. In the effect, yes. Isn't it true that bacteria cannot go through a film in vapor form?

A. Yes, I think that is true.

Mr. Johnson: I have no further questions.

The Court: Just let me see if I understand what you are saying.

[fol. 789] Mr. Johnson: Your Honor, I could make a statement about that, if it will help.

The Court: It might.

Mr. Johnson: I just wanted to clarify a point that he made in cross-examination with respect to spoilage resulting from transmission of moistures.

The Court: In other words, what you are saying, Dr. Ball, as I understand you, is that if there is permeation of moisture in liquid form, that could carry bacteria with it, whereas if it was in vapor form, it could not? Is that the point of this last discussion?

The Witness: Well, I thought the question that I answered was whether or not bacteria could go through a film with moisture vapor.

The Court: The answer to that is no?

The Witness: The answer to that is no. Anything that moisture as liquid can go through, I should say that bacteria could go along with the moisture.

The Court: I see.

The Witness: (Continuing) With the liquid, bacteria could go along with the liquid. But the permeation of [fol. 790] moisture into the food, bringing about spoilage, did not necessarily have a connection with the passage of bacteria through the packaging material. I think when we were discussing it before, it was with the idea that the moisture getting into the food would create a condition which would allow bacteria that are already there to grow.

The Court: Yes, it would create a favorable climate for the development and multiplication of bacteria.

The Witness: That's right.

The Court: All right, thank you very much, Dr. Ball.

(Witness excused.)

Mr. McManus: Call the next witness, your Honor?

The Court: Yes, please.

Mr. McManus: Mr. Dallas.

RONALD H. DALLAS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Dallas?

A. Anchor Hocking Glass Corporation.

[fol. 791] Q. And what is your position with that corporation?

A. I am vice-president and sales manager of the Maywood Glass Company.

Q. And is Maywood a subsidiary of Anchor Hocking Glass Company?

A. Yes.

Q. Is it a wholly-owned subsidiary?

A. Yes.

Q. And what areas—

The Court: It is in effect operated as a division, is it?

The Witness: Well, actually, I understand it is called a subsidiary of Anchor Hocking.

The Court: I see.

The Witness: Instead of a division.

Q. Are there any plans to keep it as a subsidiary, or in other words, change?

A. Well, the plan is to dissolve Maywood at the end of this month.

Q. And what would Maywood become then?

A. Anchor Hocking Glass Corporation, Western Division.

Q. Now, Mr. Dallas, could you give us your back [fol. 792] ground in the glass container industry?

A. Yes. I started in 1924 with the Long Beach Glass Company, in Long Beach, California. In 1934 the company was moved to Los Angeles and the name was changed to Glass Containers, Incorporated.

In 1947 I resigned and was employed by Anchor Hocking.

Q. And you have been with Anchor Hocking, the Maywood Company, ever since?

A. That is correct.

The Court: Are you principally in the production phase?

The Witness: Sales.

The Court: Sales.

Q. And the plants that you listed, are they located in the State of California?

A. That is correct.

Q. And your entire association with the glass container industry has been with companies located in California?

A. That's right.

Q. First, where are the Maywood Company plants located?

A. Well, the Maywood plant is located in Los [fol. 793] Angeles. There is only one plant under the Maywood name.

Q. Is this a plant under the Anchor Hocking plant?

A. That is in San Leandro, California.

The Court: What is that, North California?

The Witness: Yes.

Q. And is that under your direction, also?

A. Sales of the products from that plant are under my direction.

Q. Are there any other plants operated either by Maywood or by Anchor Hocking in California?

A. Yes. There is a metal closure plant operated by Anchor Hocking in South Gate, California.

Q. Do you sell their products, also?

A. Yes.

Q. What type of closures are produced by that plant?

A. The screw type closures.

Q. No vacuum caps are produced there?

A. That is correct.

Q. Now, you have a sales force operating under you, I presume; is that right?

A. I hope.

[fol. 794] Q. And could you tell me the states throughout which your sales force operates?

A. Yes.

California, Oregon, Washington, Idaho, Utah, Nevada, Arizona and the Hawaiian Islands.

Q. And to your knowledge do the sales from the plants from either Anchor or Maywood go into the states that your salesmen cover?

A. That is correct.

Q. In your sales work have you become familiar with other companies operating in this area, other glass container companies?

A. Yes.

Q. Do you know where the plant locations are? Do you know the names of the other companies operating in this area?

A. Yes, sir; I do.

Mr. Hughes: What area is that?

Mr. McManus: In the area in which he sells?

The Court: You are talking about the area which you defined by states a few minutes ago?

The Witness: Yes, that is my understanding.

Q. First, could you tell me the names of the—how many companies there are operating in that area?

[fol. 795] A. Ten in the entire area.

Q. Could you list those? I will count them for you.

A. All right.

Owens-Illinois, Glass Containers, Latchford Glass Company.

The Court: How do you spell that?

The Witness: L-a-t-c-h-f-o-r-d.

A. (Continuing) And Maywood Glass Company, Thatcher Glass Manufacturing Company; Hazel-Atlas Glass Division of Continental Can; Ball Bros. Glass Company; Kerr Glass Company; North Western Glass Company and the Gallo Wine Company.

They may have a separate name for their glass operation, which I am not familiar with.

Mr. Handler: The word "operation," does that relate to the location of plants in those states or sales in those states?

Mr. McManus: I asked him what companies have plants in this area.

The Court: That was the question.

Q. And to your knowledge, is Gall Wine selling glass containers in the area in which you service?

A. I don't believe they are.

[fol. 796] The Court: Do they only make it for their own use?

The Witness: I believe so, yes.

The Court: Make containers for their own use.

The Witness: Yes.

Q. Could you tell me where the North Western Glass Company's plant is located?

A. In Seattle, Washington.

Q. And do you know where Kerr's plant is located?

A. Santa Ana, California.

Q. And Ball Bros.?

A. Del Monte, California.

Q. And Hazel-Atlas Division of Continental Can?

A. They have one plant in Oakland and one in Pomona.

Q. And they are both in California?

A. Yes.

Q. And Thatcher?

A. Saugus, California.

Q. And you said Maywood is operating out there, and you have listed—that would include Anchor Hocking.

A. That would include the Anchor Hocking plant at [fol. 797] San Leandro, which we have named.

Q. And Latchford?

A. Los Angeles.

Q. And Glass Containers, Inc., did you say?

A. Well, they are called Glass Containers Corporation now. They have a plant in Vernon, California, one in Hayward and one in Antioch, California.

Q. And Owens-Illinois?

A. Oakland and Los Angeles.

Q. If I followed you correctly then—other than the Owens-Illinois plant in Portland, and the North Western Glass Company's plant in Washington State, all the other plants are located in California?

A. That is correct.

Q. Now, is it possible to tell by looking at a glass container the company that manufactured that glass container?

A. Depends whether the trade-mark is on the bottom. Some containers do not have the trade-mark on, but most companies do have a recognizable trade-mark.

Q. So that if the trade-mark was on the glass container, you could tell from the mark what company had made that glass container?

[fol. 798] A. If it is legible, yes. When you say could I tell?

Q. Yes.

A. I could qualify that by saying someone could tell. I am not sure that I am familiar with all of the companies' trade-marks.

Q. But there are publications which indicate the trade-marks of the various glass container companies?

The Court: Well, they are ascertainable.

Mr. McManus: Yes.

Q. I don't know if I covered this question. Other than the states that you listed for your sales force, does your company solicit business outside of those States?

A. No.

Q. You are of course familiar with the prices that Maywood charges for glass containers on the West Coast?

The Court: Before we go to that, would it be fair to say, Mr. Dallas, that the Maywood and Anchor Hocking operation in California produce what would be called a full representative line of glass containers?

The Witness: We make a fairly wide line, but there are some types we do not make.

[fol. 799] The Court: I mean, there would be some exceptions.

The Witness: That is correct.

The Court: What would be the exceptions that you don't make?

The Witness: We do not make toiletry and cosmetic containers. We do not make the graduated prescription bottles and we do not manufacture milk bottles.

The Court: Do you manufacture beer bottles out there?

The Witness: Make beer bottles, yes.

The Court: Now one other thing before we leave that general subject.

Would you give us an idea of your gross—well, whether

you use the figure net sales in the sense we have been using it here—your sales volume, your yearly sales volume in that area?

Mr. Martin D. Jacobs: (Counsel for Anchor Hocking) Your Honor, if I may be heard? I am very much afraid that that gets into an area of departmental or division sales or operations of the company, which of course Anchor, like all other companies, regards most sensitively as pretty [fol. 800] confidential trade secrets, and I suggest to the Court that certainly under the circumstances here this is something that shouldn't be inquired into.

The Court: Well, we won't go into it unless it is necessary. We will pass it for the moment, at least, Mr. Jacobs.

Mr. McManus: Although Mr. Dallas wasn't here, your Honor, maybe I could ask him:

Q. The sales of Anchor Hocking, of which we have a 10-K report, would reflect also the sales of Maywood Glass Company?

A. They are incorporated, yes.

Q. They are incorporated in that report?

A. Yes.

The Court: Of course, if you are going into this in any detail, I have, frankly, some question as to whether anything is very meaningful about specific companies or West Coast operations unless we have got some idea of volume and some idea of the position which Anchor Hocking occupies in relation to other people out there.

Mr. McManus: Your Honor, you are absolutely correct and we do have in our statistical chart a breakdown of the West Coast, separate from the rest of the country, [fol. 801] and we have given the unit figures to the defendants and we do have that chart. I think the objection is to bring out their dollar sales on this record at this time.

The Court: In any event, what I am going to require here at some point is some information as to the relative position that Anchor Hocking or the Anchor Hocking-Maywood operation on the West Coast bears with relation to other manufacturers at least.

Mr. McManus: Yes, sir; and we do have that information.

The Court: You do have it?

Mr. McManus: Yes. We don't want to put it on the record as a public thing here. I believe it is included in your statistical data.

The Court: Which will come in eventually.

Mr. McManus: Yes, sir; we hope so.

The Court: Under some sort of protective order.

Mr. McManus: That is correct.

The Court: All right.

By Mr. McManus:

Q. I believe you just testified that you just testified that you were familiar with the prices charged for glass [fol. 802] containers sold on the West Coast, either by Maywood or Anchor Hocking; is that correct?

A. That is correct.

Q. Are you familiar with the prices that Anchor Hocking charges for glass containers outside of the area that you service?

A. Yes, I am.

Q. Could you tell us the prices that you charge for the area in which you service are higher or lower than the prices charged outside the area in which you sell?

A. They are higher.

Q. They are higher where?

A. In the area that we service.

Q. Do you know if that has been true over a period of years?

A. Yes, it has.

Q. Would it be true over the past five or ten years?

A. Yes, sir.

Q. And prices, to your knowledge, are competitive with the prices of the other glass container companies selling on the West Coast?

[fol. 803] A. I believe they are, in general.

Q. Now, you indicated that Hazel-Atlas had plants on the West Coast?

A. Yes.

Q. Do you know the type, do you have knowledge of the general classification of glass containers that they sell on the West Coast?

Mr. Hughes: Your Honor, I think I will object. It seems to me there is a surer and more positive way of getting that than through this witness.

The Court: Well, let's reframe the question.

Q. Are you familiar that Hazel-Atlas Glass Company are selling glass containers on the West Coast?

A. Yes, sir.

Q. Since 1956, to your knowledge, has Hazel-Atlas Company sold any beer bottles on the West Coast?

Mr. Hughes: Your Honor, I don't want to appear to be technical, but since 1956 it is the Hazel-Atlas Division. You recognize that?

Mr. McManus: Yes.

The Court: Oh, yes.

Mr. Hughes: May we have the question again?

(Question read.)

[fol. 804] Q. Would you answer that?

A. I believe they have sold some, yes.

Q. And to whom have they sold beer bottles?

A. My information is they sold to Falstaff Brewing Company.

Q. Now, would they be of the amber type of beer bottle?

A. Yes.

Q. To your knowledge, have they sold any other amber glass on the West Coast since 1956, the Hazel-Atlas Division of Continental Can?

A. Yes. My information is that they have sold some bottle for sodium hypochloride.

Q. And to whom have they sold these bottles, or do you know?

Mr. Hughes: Your Honor, it does seem to me that this is all hearsay information. He says he understands.

The Court: Let's have some idea of the source of his information on this.

Mr. McManus: All right.

Q. And how did you become apprised of their sales?

A. Through the reports of my salesmen.

[fol. 805] Q. And could you explain to me how they would have knowledge of such sales?

Mr. Hughes: I object to it.

The Court: Overruled at this point.

A. They call on the same customers.

The Court: In other words, you were informed by your salesmen that their customers had said that they bought the containers from Hazel-Atlas Glass?

The Witness: Yes.

The Court: I will take it. I am not going to apply the hearsay rule with such strictness to this situation. If it isn't so, Mr. Hughes, you have a very easy way of demonstrating that it isn't so.

Q. Now, are you a member of or is your company, either through Anchor Hocking or the Maywood Glass Company, a member of the Glass Container Manufacturers Institute?

A. Yes.

Q. And in participation with that Institute have you engaged in the promotion of soft drink bottles on the West Coast?

A. Yes.

Q. Is that promotion that your company has carried out, is that done on a nationwide basis, or is it limited [fol. 806] to the West Coast area?

A. Current promotion is limited to the seven most Western states, continental states.

Q. Now, do companies not member of GCMI, have they participated in that promotion?

A. No.

Q. It has been limited to the GCMI members?

A. That is correct.

Q. Prior to 1956 were there any such promotions, to your knowledge?

A. There were some promotions, yes.

The Court: Was this in the nature of some special campaign that is presently being carried on?

The Witness: The other question was in reference to a present campaign.

The Court: Yes.

Mr. Hughes: I didn't catch that answer. His voice dropped and I didn't catch that.

The Court: "The other question was in reference to a present campaign."

Q. When you were talking about promotions of soft drink bottles prior to 1956 by Hazel-Atlas Glass Company, would that be in the period 1950 to—

Mr. Hughes: Just a minute. He was talking about [fol. 807] Anchor Hocking, your Honor, and not Hazel-Atlas, as I understand it.

The Court: As far as I know, there has been no reference to Hazel-Atlas.

Mr. McManus: I am sorry. I will withdraw my question.

Q. You have been talking about promotion of glass container, of soft drink glass containers, on the West Coast, and I believe you testified that prior to 1956 there were such promotions; is that correct?

A. Yes, there were.

Q. And the members of GCMI participated in these promotions; is that correct?

A. That is correct.

Q. Did Hazel-Atlas Glass Company, to your knowledge, participate in these promotions?

A. Yes.

Q. Since 1956 and since the acquisition of the Hazel-Atlas Glass Company by Continental Can, have you had similar promotions of soft drink glass containers?

A. Yes.

Q. And has the Hazel-Atlas Division of Continental Can participated in these promotions?

A. They did not participate in 1958.

[fol. 808] Q. And do you have one currently?

A. Yes.

Q. And are they participating in that one?

A. That is correct.

The Court: Before we go any farther, let me understand the significance of this. Certainly the principal container used for soft drinks has traditionally been glass bottles, have they?

The Witness: That's right.

The Court: That is the purpose of this current promotion you talk of?

The Witness: The metal can manufacturers have been trying to get a part or a large part of it.

The Court: In other words, this a defensive measure?

The Witness: That is correct.

The Court: It is a defensive offensive. Put it that way.

The Witness: That is about right.

The Court: All right.

By Mr. McManus:

Q. Are you familiar in a general way at least with the cost items that are used in arriving at the price that you sell your glass containers?

[fol. 809] A. In a general way, yes.

Q. Could you estimate approximately the percentage of your glass containers which are shipped in corrugated shipping containers?

A. I would estimate them to be between 90 and 95 per cent.

Q. And could you estimate the relationship between—

Mr. McManus: I will withdraw that.

Q. Could you tell me what the corrugated shipping container cost represents in the final price in the sale of your glass container, percentagewise?

A. It would vary, but it would be between 15 and 18 or 19 per cent.

Q. Now, you have testified heretofore that you are familiar with Hazel-Atlas activities because your people called on the same customers; is that your testimony?

A. Well, there are two specific customers you asked about?

Q. To your knowledge, do they call on the same customers, the same customers in the food processing field?

A. Oh, practically all of them.

[fol. 810] Mr. McManus: That is all.

Cross-examination.

By Mr. Hughes:

Q. Mr. Dallas, you have no idea and cannot tell his Honor what the amount of the contribution of Hazel-Atlas was to this promotion campaign prior to 1956, can you?

A. No, I can't.

Q. And you don't know whether it is large or small or medium or anything else, do you?

A. That is correct.

Q. And is it correct to say that the funds for such a promotion are raised by an assessment against the members of the Institute who contribute into a fund, and then the Institute disburses that fund?

A. That is the way they are handled, yes.

Q. Now, Maywood makes only glass containers; is that correct?

A. That is correct.

Q. Makes no plastic products of any kind; is that correct?

A. That is correct, yes, sir.

Q. And do I understand that in addition to selling your glass containers, your salesmen also sell closures made by the Anchor Hocking?

[fol. 811] A. Yes, sir.

Q. And as they go about, I take it they try to sell both your glass container and the Anchor Hocking closure; is that correct?

A. Yes, that's right.

Q. And there are instances where they sell the glass, but don't sell the closure; is that correct?

A. That is correct.

Q. And instances where they sell the closure and don't sell the glass.

A. That is also correct.

Q. And other instances where they sell both; is that correct?

A. Correct.

By the Court:

Q. May I ask you this, Mr. Witness:

Does Anchor Hocking sell closure machinery? It doesn't in connection with the screw type closure, I take it?

A. That's right; no closure machinery in connection with screw tops.

By Mr. Hughes:

Q. And the glass containers that you sell are priced separately from the closures; is that correct?

[fol. 812] A. That is right.

Q. And sold separately?

A. Right.

Q. Mr. Dallas, would you say that competition in the glass container industry was keen and vigorous?

A. Yes, sir.

Q. Would you say that it was keen and vigorous in the seven state area to which you have referred?

Q. Yes, it is.

Q. Now, your company makes beer bottles and soft drink bottles; is that correct?

A. Yes.

Q. They do not make any of the crowns for those soft drink bottles or beer bottles; is that correct?

A. That is correct.

Q. Now, are some of your customers customers who do business on a national basis? That is, are they people who have a nationwide distribution of their products?

A. Do you mean are we selling people on the Pacific Coast who ship their products packed on the Pacific Coast to all parts of the nation?

Q. No, I meant do you have customers whose products are sold everywhere in the United States?

[fol. 813] A. Yes.

Q. Or substantially everywhere in the United States?

A. Yes.

Q. And do some of those customers do their purchasing centrally?

A. Some of the purchasing is handled in the East at headquarters, and some are handled by their local plants on the Pacific Coast.

Q. Now, in those instances where it is handled on the East Coast, how does it come to your attention? What are the mechanics by which you learn of and do anything about a purchase order?

A. Well, they would place the order with one of our salesmen of one of the Anchor Hocking sales offices in the East, and they would be transmitted to Maywood and be produced.

Q. And that order which was placed in the East might relate to purchases for numerous places, including the West Coast area; is that correct?

A. I don't know that any specific purchase order would specify partial production in the East and partial on the West. Perhaps I didn't understand your question.

[fol. 814] Q. In any event, when there is an order centrally placed in the East, as you have described it, it would be received there and forwarded to you for processing and execution; is that correct?

A. Yes.

Q. Is one of the unions with which you deal the American Flint Glass Workers Union?

A. Yes.

Q. And are the negotiations with that union on an industrywide basis?

A. Yes, that is correct.

Q. And are they on a national basis?

A. Yes.

Q. Is another one of the unions with which you deal the Glass Bottle Blowers Association?

A. That's right.

Q. And do you negotiate with them on an industrywide basis?

A. Yes, sir.

Q. And on a national basis?

A. Yes, sir.

Q. Do you know of any manufacturers of glassforming machines in this seven state area to which you have referred?

[fol. 815] A. I know of none.

Q. Do you know of any manufacturers of machines that makes the closures in the seven state area?

A. I don't know of any.

Q. And do you know of any manufacturers of the machines that make the seal between the container and the closure in this seven state area?

A. There was a very small company in Portland a couple of years ago that made a couple of machines, small machines. I think they have discontinued them. I believe the company was bought out by someone else.

Q. And they are out of business now?

A. I believe so.

[fol. 816] Q. Would you say that most of your customers use more than one source of supply for containers?

A. Yes, I would.

Q. Would you say that most of your customers use more than one source of supply for closures?

A. Of the type of closures that we manufacture, the screw type—

Q. When you say "we," you are distinguishing now between Anchor Hocking and Maywood, is that correct?

A. Yes. In the screw type of closure most of our customers use closures from a variety of suppliers, yes.

Q. Would you name for me the glass companies who have glass container manufacturing plants in the Southern California or Los Angeles area—I am distinguishing between Northern California and Southern California?

A. Owens-Illinois, Glass Containers, Maywood, Litchford, Thatcher, Hazel-Atlas, Ball and Kerr.

Q. Would you name for me the companies that have glass container manufacturing plants in the San Francisco area?

A. Owens, Hazel-Atlas, Glass Containers, and the Gallo Wine Company in Modesto.

[fol. 817] Q. How about Anchor Hocking?

A. Yes, Anchor Hocking.

The Court: Would you say, Mr. Dallas, that the bulk of your glass sales in the area you described were in connection with food products?

The Witness: I believe the majority of it is, yes.

The Court: Would your sales of beer and soft drink bottles represent a substantial segment of your business out there?

The Witness: Yes, it would.

Q. And if you took the beer and soft drink bottles and

what I refer to as food jars of one kind or another, that would be the bulk of your business actually, wouldn't it?

The Witness: We do a lot of sodawater business and a lot of wine bottle business.

The Court: Wine bottles?

The Witness: Yes.

The Court: All right.

Q. Mr. Dallas, you haven't the faintest idea of how many beer bottles Hazel-Atlas has sold out in that area that you operate in?

A. No, I have not.

[fol. 818] Q. That is, you don't know whether it is a large amount or a small amount?

A. I don't know.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. McManus?

Mr. McManus: I just have a few questions, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, did you testify that you knew no closure manufacturers on the West Coast?

A. I was not asked that.

Q. Do you know if there are closure manufacturers on the West Coast of screw-type caps?

A. Yes.

Q. Now you indicated that for the screw-type closures a purchaser might have a number of suppliers?

A. Yes.

Q. Did you mean to indicate that for a vacuum-type of closure that they would be limited to one or two suppliers?

A. There would be a limit to the number of manufacturers that make the vacuum-type of which there aren't as many that make the screw-type.

[fol. 819] Q. Do you know how many there are on the West Coast selling vacuum closures?

A. Yes, there are three.

Q. And who are they?

A. There are four, excuse me.

Q. Yes.

A. Owens-Illinois, Crown Cork & Seal, White Cap and Anchor Hocking.

Q. Now just to get the record clear, to your knowledge, is Anheuser-Busch Company a national concern?

A. I think it is.

Q. If you sell a beer bottle to their plant on the West Coast, if you did, you would have no knowledge as to whether that bottle was used on the West Coast or shipped to St. Louis, would you?

A. Not specifically.

Q. You have also testified that the American Flint Glass Union—what is the name of that?

A. American Flint Glass Workers Union.

Q. Does that union negotiate with the industry on a national basis?

A. That is right.

Q. Are you familiar with those negotiations?

A. No, I am not.

[fol. 820] Q. Do you know if they negotiate salarywise in your area?

A. I couldn't answer that specifically.

Q. So you do not know what their salaries are throughout the country?

A. No, I don't.

Q. You also testified that the Glass Bottle Blowers Association negotiated on a national basis?

A. Yes, that is correct.

Q. Have you participated in those negotiations?

A. No, I have not.

Q. Would you know if the salary negotiations were conducted separately on the West Coast from those on the East Coast?

A. Well, the actual basic negotiations cover both the East and the West. The rates will differ.

Q. You are talking about hourly rates?

A. The hourly rates in the West would differ from the hourly rates in the East.

Q. Do you know that of your own knowledge? Are you familiar with that?

A. I haven't seen it in writing but I know from our conversations in the company that that would be the fact.

[fol. 821] Q. You know that there is a difference?

A. Yes.

Q. Do you know if they are higher or lower on the East or West?

A. They would be higher in the West.

Q. Do you know if that would be true with the hourly rates of the Flint Glass Union?

A. Yes.

Q. It would be higher in the West?

A. Higher in the West.

Q. Your company leases vacuum-closure machinery on the West Coast?

A. Yes.

Q. And does not sell them?

A. That's right.

Mr. McManus: That is all I have.

Redirect examination.

By Mr. Hughes:

Q. Mr. Dallas, does the Aluminum Company of America make vacuum closures?

A. Yes, they do. That is one I did not mention.

Q. And they sell on the West Coast?

A. Yes, that is right.

[fol. 822] Mr. Hughes: No further questions.

The Court: All right, thank you, Mr. Dallas, you may step down.

(Witness excused.)

The Court: I think we will take our luncheon recess now, gentlemen, and return here at five minutes after two.

(Recess to 2.05 p.m.)

AFTERNOON SESSION

The Court: All right, Mr. McManus or Mr. Greenberg, Mr. McManus. Mr. Algeo, will you take the stand.

JOHN S. ALGEO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Algeo, I understand you are presently retired, is that correct?

A. That is correct.

Q. Before your retirement by whom were you employed? [fol. 823] A. Before I was actually retired I was employed by the Continental Can Company.

Q. And prior to that by whom were you employed?

A. Prior to that I was employed by the Hazel-Atlas Glass Company.

Q. And for a period of how many years with that company or its predecessor company?

A. 50 years.

Q. In what capacity?

A. Sir?

Q. When you left Hazel-Atlas what was your capacity?

A. Actually when I retired I was just an employee. When Continental Can Company had taken over Hazel-Atlas I had no official position.

Q. But prior to Continental taking over Hazel-Atlas what was your position with the Hazel-Atlas Glass Company?

A. I was the general sales manager up until—say for about six or seven years up to 1954—I think I am correct—I retired then and I have the title of vice-president, but I did not have the official title of general sales manager for [fol. 824] two years or some such time.

Q. At the time when Continental Can acquired Hazel-Atlas and for the years prior thereto, were you familiar

with the prices charged by the Hazel-Atlas Glass Company for its wares?

A. Yes.

Q. And on what basis were glass containers sold, were they f.o.b., delivered price, or on what basis?

A. Most glass containers were sold on a zone basis. We usually used the expression "free delivery territory" to mean the zoning system.

Q. Now could you tell us how this system came about?

A. Well, competition.

Q. In general—

The Court: Before we go into how it came about, let us first find out what it is.

Mr. McManus: Yes, Your Honor.

Q. Would you please explain that?

The Court: Tell us what the zone system is and what you mean by it.

The Witness: The zone system means that the price for an item is the same delivered to any point in that zone in car lots.

[fol. 825] Q. And what is the free delivery system, is that different from another zone?

A. I don't know whether I understand that or not. The free delivery territory, as we called it, was a zone.

Q. Now were there areas in 1956 outside of the free delivery zone?

A. Yes. The Pacific Coast, for example, was not a part of the territory that was covered by the expression "free delivery territory," and there were other points—

The Court: Now, Mr. Witness, do you mean by that whereas in zones outside of the Pacific territory containers were delivered to any customer in that zone at the same delivery price, that was not true in the Pacific Coast?

The Witness: That isn't what I meant. The Pacific Coast was a zone in itself.

The Court: It was a separate zone?

The Witness: Yes.

The Court: And when you say a free delivery zone, was each one of the zones a free delivery zone?

The Witness: Yes, that is correct.

The Court: So that the Pacific Coast was simply a separate free delivery zone?

[fol. 826] The Witness: Yes.

The Court: Is that correct?

The Witness: That is correct.

By Mr. McManus:

Q. Did you have occasion to study the pricing of glass containers over a period of years, Mr. Algeo, under the zone system?

A. Yes.

Q. When you testified that the East Coast had one zone separate from the West Coast, to your knowledge, was that true not only of your own company but of other companies?

Mr. Hughes: I object. I don't think that is what the witness said.

The Court: Let me have the question again.

(Question read.)

The Court: I will sustain the objection.

Q. You said that the West Coast had a free delivery zone, is that correct?

A. That's right.

Q. And was that zone separate and distinct from the free delivery zone in the East?

The Court: Wait a minute, Mr. McManus. As I understood [fol. 827] the testimony of this witness, he said that there were a number of different zones, and within each one of those zones there was what was called free delivery at the list price.

How many of those zones were there, Mr. Witness, if you recall?

The Witness: That is a little difficult to answer. This zoning system was a result of an evolution in the glass container industry. The so-called free delivery zone originally 50 years ago comprised the part of the country, roughly speaking, north of the Ohio and Potomac and east of the Mississippi Rivers. When shipments were made outside of that zone, the price depended upon the extra freight outside of the so-called free delivery zone. The

custom in those days was to charge—it is getting a little bit difficult—the price in the free delivery zone was the price at the gateway, which would be St. Louis—Louisville, Richmond, Virginia, and so on.

The list price covering the freight to the gateway, and the customer paid the difference.

The Court: I see.

The Witness: So that both the so-called free delivery territory in those days there was no—the price at one [fol. 828] occasion was one and the price at another occasion was another one. Over the years, glass plants were built in these outlying territories; in Texas, Oklahoma and the South, and they created competition, and modifications had to be made, and other zones were built up.

And it resulted—by the time I retired, which was the end of 1956, competition had brought about this situation whereby in most of the country east of the Missouri River and south down to Oklahoma and Texas, the prices in all that territory was virtually the same. In other words, practically all of that territory became the free delivery territory in the lines in which we were important factors.

Now, in some other lines the story was somewhat different, but I am talking chiefly about food containers, which was our main product.

So over the years this evolution brought about virtually one free delivery territory which covered the bulk of the country. The Pacific Coast is still a separate zone, but the same theory was carried out, mainly, the price was the same at any point in that zone. There was a price—

The Court: That is, the price was equalized there but higher than it was for the East?

[fol. 829] The Witness: That is correct.

The Court: I think I understand it. All right, Mr. McManus.

By Mr. McManus:

Q. Mr. Algeo, did your company produce containers for baby foods?

A. Yes.

Q. When did you first begin the production of baby food containers?

A. About 1922 or 1923. I couldn't give you the specific date but it was about that time.

Q. And that would be a glass container?

A. Yes, sir.

Q. And did you produce those baby food containers in glass steadily from 1922 right through to date?

A. Yes.

Q. When I say "to date," I am referring to the time that Hazel-Atlas Glass Company was acquired by Continental Can.

A. That is correct.

Q. And who did your company initially produce the baby food containers for, what company?

[fol. 830] A. Harold Clapp in Rochester, New York. I don't know whether he had a company; I know it was just Harold Clapp.

The Court: He was the baby food originator?

The Witness: That is correct.

Q. And did you continue to produce baby food glass containers for him up until 1956?

A. Oh, no, not for him. He sold his business long about 1930 or '31, and the company which bought him out turned to tincans, so we lost that business. But in the meantime others had gotten into the baby food business.

Q. And who would these other companies be?

A. Well, I don't remember the chronological order, but Beechnut was one of the first; H. J. Heinz Company was one; Libby, McNeill & Libby was one. A Detroit firm—the name escapes me offhand.

Q. All right, sir. And what type of closure did you use on your glass baby food containers?

A. On the original?

Q. Yes.

A. At that time we had our own vacuum cap. We called it the Hazel cap, and Clapp used that as long as he did business with us, that is, until he sold out.

Q. Did you manufacture machinery to put that [fol. 831] cap on the glass container?

A. Yes.

Q. What type of cap was that, what material?

A. It was made of aluminum, not tinplate.

Q. And did you, up until the time that you left the organization, continue to make this type of cap?

A. No.

Q. What were the factors that made you decide to discontinue to manufacture of this cap?

A. Well, the decisive factor was the fact that we weren't making a profit out of it. The reason we didn't make a profit was because the material, that is to say, aluminum, was costly as compared with tinplate. Our machine had become antiquated. It was not a straight line machine. It was what we call a bucks type machine. And I think I can assign another reason, which was this: that we thought more of glass than we did of caps. The cap business, vacuum cap business, sort of stuck to us, and we thought in terms of caps instead of glass, and all of those reasons, plus the fact that competitive caps had improved, and they had the big advantage over us, we just went out of the business.

Q. Now, you have testified here that one of [fol. 832] your major lines was the food line; isn't that correct?

A. That is correct.

Q. And would that be the narrow neck or wide mouth?

A. Chiefly wide mouth.

Q. Are there historical reasons why you were chiefly a wide mouth company?

A. Yes. We were always food-minded. The first container ever made by our original company, which was the Hazel Glass Company, was a fruit jar, a mason fruit jar, and we sort of got started in the wide mouth food business, and that was always our love. 1893, I think it was, we developed a semi-automatic machine for making jars, not bottles, jars. That was a considerable advantage to us for a number of years. We increased our wide mouth business. We had the machine and we liked it. And—I don't know how deep you want me to get into this thing, but that same time we still made bottles by the old hand method. Then in 1904 the Owens Automatic Bottle Machine became commercial. That machine made both bottles and jars. We acquired the rights to the wide mouth food container business, not bottles, jars, wide mouth. [fol. 833] The Owens machine was so far superior to

everything else that had been developed up to that time that we were handicapped in the bottle end of the business, but we stood all right in the jar end because we had acquired the Owens machine rights for the wide-mouth jars.

That answers your question, doesn't it?

Q. Just one more question: was that, the license to make wide mouth food jars, was that an exclusive license to your company?

A. Yes, sir; for that category.

Q. For wide-mouth food jars?

A. Going to the food packer.

Q. I see.

A. It did not include wide-mouth jars going to the consumer, which would be fruit jars or home canning jars.

Q. Now, when you left in 1956 was your company engaged in the production and sale of opal ware?

A. Yes.

Q. And what industries were you selling opal ware to?

A. Well, the bulk of our opal ware went to the cosmetic trade, a considerable part to the medicinal trade. [fol. 834] But the bulk of it was cosmetic.

Q. Now, did you make a line of Flint glassware?

A. Why, yes.

Q. And that would be white glass; is that correct, I mean, your transparent glass?

A. Transparent, crystal; that's right.

Q. And that would include your sales to food processors; is that it?

A. Yes.

Q. Now, would it also include sales to household and industrial users?

A. Yes.

Q. Out of the facilities of your company could you make amberware?

A. Yes.

Q. And what would be necessary when you left, what would be necessary to make amberware? What changes would have to take place to convert some of your facilities from Flint glass to amber?

A. Well, nothing except to put the proper ingredients

into the tank or furnace. The type of furnace required is the same for either amber or flint.

[fol. 835] Q. I see. So it would be just putting different ingredients into the tank or the furnace.

A. That is correct.

Q. Now, for the period of time that you were associated with the company, had the company always been a profitable operation? Had you always showed a profit?

A. Yes, with the exception possibly of the first three or four years.

Q. I see.

A. My recollection is we paid our first dividend in 1907. We never passed a dividend, but we increased it numerous times. We always operated at a profit.

Q. And that would be true for the two or three years prior to your leaving the company?

A. Yes, sir.

Q. During the period of time prior to your leaving the company, two or three years, were you on the board of directors at any time?

A. I was on the board in the spring of 1956, if I remember rightly.

Q. And when did you first go on the board, approximately?

A. Oh, about 1944 or '5. I don't remember exactly. [fol. 836] Q. During the period of time that you were on the board of directors, had the board of directors offered to sell Hazel-Atlas Glass Company to any other company?

A. Not to my knowledge.

Q. Had there been any discussion during that period about selling your company to any other company?

A. Not to my knowledge. That is prior to—

Q. That is up to the spring of 1956?

A. Yes.

Mr. McManus: That is all I have.

Cross-examination.

By Mr. Hughes:

Q. Mr. Algeo, you told us that your company first started manufacturing baby food jars for the Clapp Food Company up in Rochester.

A. Yes, sir.

Q. And did there come a time when the volume of your business in baby food jars declined?

A. Oh, yes.

Q. And will you tell his Honor the story, if I may call it that, from the time of the first sale to the Clapp Baby Food Company to the time when you virtually withdrew from that business?

A. Well, I don't know how much of the story you want.
[fol. 837] Q. The whole story.

The Court: Well, yes, we want the whole story, but—

Mr. Hughes: In broad strokes.

The Court:—we want it in, shall we say, relatively broad outline.

Mr. Hughes: Yes.

A. Mr. Clapp adopted a pressed tumbler as his container for the first baby food, not a jar, a pressed tumbler. Clapp continued to use tumblers.

The Court: That was vacuum-packed?

The Witness: That was vacuum.

A. (Continuing) He continued to use tumblers as long as he owned the business, which was until about 1930 or '31, I forget the exact dates. He sold out and the company which bought him went to tincans. But in the meantime, or just about that time, other people had started into this baby food business, because it was growing, and the Beechnut Company adopted a baby food jar, which is the same type as the typical baby food jar today. We got that business for the jar. We didn't get the first business that Beechnut had because a competitor [fol. 838] got it, but they supplied a tumbler-shaped jar, quite a heavy, uneconomical item to make. We designed this typical, what has become the typical baby food jar, and got the business. The machine we used at that time was

in our opinion the best machine for making that type of a jar.

Q. What was the name of that machine?

A. Miller.

Q. Miller?

A. Miller machine. We considered it the best machine in use then for that particular type of jar.

Q. And will you fix that time, about?

A. About—

Q. The time you are now talking about?

A. Around '31 or '32.

Q. Yes.

A. Over the years another machine came into use, which turned out to be much superior to our Miller machine.

Q. What was that machine?

A. The Hartford Empire IS wide-mouth machine. They had both the wide mouth and a narrow mouth machine.

Q. Yes.

A. That machine proved superior to ours by a considerable margin.

Q. It worked more efficiently and made a better product?

A. It made a jar of better quality and it made it much more efficiently.

Q. And rapidly?

A. Yes—well, that goes with efficiently, yes.

Q. Yes?

A. And we gradually lost a great deal of our position in the baby food field. That is the story.

Q. And your company didn't buy these IS machines when that development came along?

A. That is correct; we did not.

Q. So that with the advent of the IS machines, you gradually dropped out of this baby food business.

A. That is correct.

Q. And by the time you left the company you were making practically no baby food jars; is that right?

A. Relatively few; that's right.

Q. Relatively few.

A. Yes.

[fol. 840] Q. And this had all occurred, this story that you are telling us had all occurred approximately when? When was it that this IS machine became known?

A. Oh, I would say it became perfected in about '42—'41-42.

Q. Would it be fair to say that from that time on you were no longer a significant factor in baby foods?

A. Well, we—

Q. It tapered off?

A. Yes, it tapered off.

Q. During the time that you were with the company and prior to its acquisition by Continental Can, was there some resistance on the part of management to the acquisition of the so-called IS machines?

A. Yes, there was.

Q. You advocated the purchase of these IS machines, speaking for yourself personally, is that correct?

A. That is correct, yes, sir.

Q. You urged it at board meetings and in management discussions from time to time, did you not?

[fol. 841] A. Well, I don't remember whether I urged it at directors' meetings or not, but in management committee meetings I did.

Q. And up to the time that you retired Hazel-Atlas had very few of these IS machines in relation to the other machines, isn't that correct?

A. When you say IS you are talking about wide-mouth. We had narrow-neck IS machines.

Q. Yes, IS wide-mouth.

A. Yes.

Q. You had very few of them in relation to narrow neck?

A. I think when I retired we had only one wide-mouth. I may be wrong, but we virtually had none.

Q. And without pinning you down to figures, about how many of the other makes, of the Miller make, did you have?

A. Oh, I don't know.

Q. Would it be many more than that?

A. Well, it would be—

The Court: Would it be scores?

The Witness: It would be 20 or 30—I suppose 30 of them.

Q. Now you also told us that you made vacuum closures [fol. 842] and you mentioned——

A. In the twenties.

Q. Yes, and there came a time when you went out of that business, is that correct?

A. That is right.

Q. Will you again briefly tell his Honor the story of your entry into that business, its history and your withdrawal from it?

A. That is the vacuum closures?

Q. Yes; the vacuum closures.

A. Well, we hired a fellow along about 1919 who had an idea for a vacuum cap, and he developed a vacuum cap which we called the Hazel cap. It was made of aluminum. He developed a closet type capping machine, and we put the cap on the market and it sold pretty well for a number of years.

Q. But in that period of time competitive caps had been improved. The White Cap Company came along about 1928, if I remember right, with a cap which worked on about the same principle as our Hazel cap but they had a different method of getting the vacuum on a straight-line operation.

Furthermore, their cap was made of tinplate and not aluminum, and the cost was less, considerably less than [fol. 843] the aluminum cap. When those things happened, our cap was outmoded.

Q. Then you told us you were more interested in the glass container business and——

A. In addition to that, we were interested in glass, and this vacuum cap was sort of a stepdaughter. We were interested in glass and we decided to get out of that.

Q. When did you get out, about?

A. About 1930.

Q. And you never went back into the vacuum cap business?

A. No.

Q. In your time anyhow?

A. No.

Q. Mr. Algeo, would you say that competition in the glass container industry was keen and vigorous in your time in the business?

A. Yes, sir, I will say sometimes it was worse than keen.

Q. And in your experience in the business, would many of your customers for glass containers have more than one source of supply for their glass containers?

[fol. 844] A. Oh, yes.

Q. And in your experience were the caps made by the Anchor Hocking Company, the closures made by the Anchor Hocking Company, used on glass containers which Hazel-Atlas manufactured?

A. Oh, yes, that is true.

The Court: Is that all, Mr. Hughes?

Mr. Hughes: Yes, sir.

The Court: Is there anything further?

Mr. McManus: Yes, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, Mr. Algeo, you testified that you had lost considerable business in the baby food market just prior to the acquisition of your company by Continental Can?

Mr. Hughes: No; I object to that. He didn't say that at all.

The Court: No, he said he lost it away back in the forties.

The Witness: I didn't say we just lost it; I said we had gradually lost it.

Q. Now in the years before, a year or two before or three or four years before the acquisition, did your company have any plans to get back into this market with the use of a new machine?

[fol. 845] A. Yes. We realized the fact that we had been negligent in not acquiring these improved machines, and we had plans to get into that field—yes, we did.

Q. And at that time, is that the time when you started to buy or when you bought this one Hartford Empire machine?

A. Yes, that is correct.

Q. Is it the best of your recollection that you only had one Hartford IS machine; is that correct?

A. That is my recollection, of the wide-mouth type, yes, the type I am talking about.

Q. Isn't it possible that your company may have acquired other Hartford IS machines that you had no knowledge of?

A. For making wide mouth?

Q. Yes.

A. No, I don't think so. It is possible I may be wrong in saying that we only had one, but I think I am correct in that.

Q. What is the difference between a Hartford IS wide mouth and a narrow neck? They both can make either one, can they not?

A. Well, I am not an engineer.

[fol. 846] Q. All right.

A. But I will explain it this way. The wide mouth, to make wide mouth you have got to have certain attachments.

Q. Yes.

A. That are not made for the narrow mouth, and don't ask me to explain that.

Q. But with these attachments you can make either one?

A. That's right.

Q. And just prior to the acquisition of your company by Continental Can, had you constructed any new glass plants?

A. You mean just a year or two before?

Q. Yes, or—

A. We had started Plainfield.

Q. And that is where?

A. That is outside of Chicago, in Illinois; not far from Chicago.

Q. Was that completed at the time of the acquisition of Hazel-Atlas by Continental Can?

A. I don't believe it was, but I am hazy on that. I don't believe it was.

Q. Do you recall what type of equipment, forming equipment, you had in that plant?

[fol. 847] A. I am hazy on that.

Q. If you can't remember, just tell me you can't.

A. I beg your pardon?

Q. If you can't remember, just tell me.

A. I can't answer that; I don't know.

Q. Did you sell flint glass for the cosmetic industry as well as opalware?

A. Yes.

Mr. McManus: That is all.

Re-cross examination.

By Mr. Hughes:

Q. Mr. Algeo, during the time that you were actively concerned with the business affairs of Hazel-Atlas, you were advocating the location of a plant in the Chicago area and in the New York area, isn't that so?

A. Yes.

Q. And will you explain to his Honor why you regarded it as important that glass plants be located in those two areas.

A. Well, it was a matter of competition again. Our original plants and the bulk of our manufacture was in what we always termed the Pittsburgh area.

[fol. 848] Q. And you regarded Wheeling as being in the Pittsburgh area?

A. Yes. Most of our glass was made in Washington, Pennsylvania. We had a plant in Clarksburg, West Virginia, and two plants at Zanesville, Ohio, but they were in the so-called Pittsburgh area which was half-way between the two big markets, namely, Chicago and New York.

In the days when rail transportation was virtually the only transportation, that location of ours was excellent. It was half-way between the two biggest markets. The freight rates were relatively low. We were in the gas belt; we had cheap fuel. We had access to soda ash and there was a good labor market. Our location was excellent.

Then this trucking business came along, at no specific date, but I always considered 1930 as about the time when the trucking business really became a factor in the transportation industry. Trucking grew and grew

and grew, and in the meantime competitive plants had been built.

Q. That is, glass plants?

A. Glass plants; in South Jersey, and in the Chicago area. And with this trucking facility, our competitors [fol. 849] located closest to those markets than we were, could give far greater service than we could, because we were too far away to give them trucking service, and the time consumed in shipping by rail was a great handicap.

The Court: I take it that was both a time factor and the actual cost?

The Witness: The difference in cost was not appreciable but the time factor was important. Not only time, but it enabled the packer, the customer, to get along with far, far less of an inventory than he had to have when he had to buy from us or anybody else in carload lots, and keep a stock on hand to take care of delays and all of that.

That was a very important factor, the cutting down of inventory, as well as the overnight deliveries.

Well, as time went on, our central location became a disadvantage, and we wanted plants in the Chicago area, first, that is, in the big markets, and New York second, and we had visions beyond that of New England and possibly other places.

Q. Does that pretty much tell the story of it?

A. Yes. I could go on and on, but it was a matter of competition.

[fol. 850] Q. Mr. Algeo, this plant at Plainfield—what state is Plainfield in?

A. Illinois.

Q. And you date the change in the industry to about 1930; is that about when you fix the time when—

A. I fix 1930 as this trucking date.

Q. Yes, and you fix that as the time as of which—

A. Trucking became a factor.

Q. That this became a factor?

A. Yes.

Q. Did Hazel-Atlas up to the time when you retired ever construct a plant in what I would call the New York area?

A. No.

Q. And in management discussions did you advocate

this point of view that you have been explaining to us and to his Honor today?

A. Yes.

Q. And when was it that they started this work in the Plainfield plant?

A. Well, I can't tell you—

Q. Was it just before you retired?

[fol. 851] A. My recollection is that it was six or seven months before I retired. I am hazy on that. I think it is a matter of record.

Q. Mr. Algeo, do you know the reason for your company's policy against acquiring these Hartford IS machines? Do you know of any reason back of it?

A. Gosh, we are getting into personalities here. Am I supposed to answer those questions?

Q. Would you prefer not to answer that question?

Mr. McManus: Your Honor, I would like to object. He said that they did but Hartford IS machines—

The Court: No, there was apparently a long period—

Mr. McManus: When they did not.

The Court: Yes, when they did not, and that is what Mr. Hughes is going into now.

Mr. McManus: If he is talking about the period that they did not, I will withdraw my objection.

The Court: Without going into personalities, Mr. Algeo, in which we are not interested, there must have been reasons advanced by people who did not want to buy them as well as reasons advanced by those who did. Give [fol. 852] us an idea of the thinking of the two sides.

The Witness: Well, there was prejudice against Hartford Empire. I hope I don't have to say anything more than that.

Q. And this prejudice was entertained by some of your top management people?

A. Yes.

Q. And those top management people remained at top management up until the time that you retired, did they not?

A. That's right.

Mr. Hughes: That is all.

Mr. McManus: Before we excuse Mr. Algeo, Mr. Hughes,

there was one document that we had marked for identification, and rather than have him called back——

The Court: Yes, let us do that now.

Mr. McManus: It is Government's Exhibit 781, your Honor.

Mr. Hughes: Are you offering that?

Mr. McManus: Yes.

Mr. Hughes: I object to that.

The Court: Well, gentlemen, in the first place, let me see it.

[fol. 853-856] (Exhibit handed to Court.)

Mr. McManus: I am not offering it yet. I am identifying it, at least, I am trying to.

The Court: All right. Are you going to lay some foundation for it?

Mr. McManus: Yes, I am going to ask this witness to take a look at Government's Exhibit 781.

Redirect examination.

By Mr. McManus:

Q. Will you read that?

A. This was in 1954. Do you want me to read all of that?

Q. You can look through that and see whether you are familiar with it.

A. Well, let me read that again.

The Court: I will tell you what we will do, gentlemen. This is something that Mr. Algeo plainly has not seen for some time. We will ask Mr. Algeo to step down and read this. If he wishes to go into my robing room and read it, he is welcome to do so. It will take him more than 10 or 15 minutes to run through it. You may proceed with something else and then we will call Mr. Algeo back.

(Witness excused.)

[fol. 857] JOHN S. ALGEO, resumed.

Redirect examination continued.

By Mr. McManus:

Q. Mr. Algeo, having read Government's Exhibit 781, do you recall that document?

A. I have a hazy idea of having written that, yes.

Q. Do you recall that you wrote it and signed the first page of the document, the covering page?

A. No, I can't remember that specifically. There is no question but what I wrote it, but I can't remember having written this one in particular.

Q. But this was the type of letter that you would write and there is no doubt that you did write it?

A. There is no question in my mind that I did.

Q. What was your position in the company on January 29, 1954?

A. What was my position?

Q. Yes.

A. I was the general sales manager.

Q. Were you a director at that time?

A. Yes.

Q. And do you recall that you made such a speech at the Cannery Convention?

A. I have a recollection of having done so. The remarks I made there ring a bell. I remember this, talking about [fol. 858] those things at the time, but I can't remember just sitting down and writing that specific letter, but there is no question but what I wrote it.

Mr. McManus: Your Honor, the Government would like to offer Government's Exhibit 781.

Mr. Hughes: May I ask some questions?

The Court: Yes, you may ask some questions about it.

By Mr. Hughes:

Q. Mr. Algeo, this document, Government's Exhibit 781—

The Court: Has Mr. Algeo got it before him?

Mr. Hughes: Oh, excuse me.

The Court: I think he should have a copy of it before him if he is going to be questioned about it.

(Document handed to witness.)

Q. Mr. Algeo, Government's Exhibit 781 consists of three pages. The first page appears to be addressed to all agents, and then the next three pages appear to summarize some remarks that you made, is that correct?

A. Yes.

Q. And they were made to a group of your own people, Hazel-Atlas people, is that correct?

[fol. 859] - A. That is correct.

Q. This was not a speech at the Canners Convention?

A. No, that was made to our own people.

Q. And this was not a company policy document in any sense, was it?

A. Well, no, it was not.

Q. It just represented your own thinking in trade discussions, is that right?

A. Yes.

The Court: Did it purport to be, as you recall it, Mr. Algeo, more or less a review of what had happened during the previous year and what the general plans were for the immediate future?

The Witness: That is exactly what it says, yes.

The Court: That is a fair statement of what it says?

The Witness: Yes.

Q. It was not customary or routine for you to make memoranda of this sort, was it?

A. Not in the sense that I do it every day, no.

Mr. Hughes: Your Honor, I object to it.

The Court: Overruled, I will take it. I will hear you [fol. 860] on it, if you wish, but I cannot conceive of any possible objection to a document of this kind.

Mr. Hughes: Your Honor, it seems to me that it is complete hearsay. It is a statement of what this witness recorded as the remarks he made in January, 1954. It certainly is not a document made in the usual and regular course of business.

The Court: I am not admitting it on the basis that it is a document made in the regular course of business,

Mr. Hughes: This is a document that is signed by the sales manager of Hazel-Atlas, and that is enough for me.

Mr. Hughes: It was not given any circulation outside of the organization, your Honor.

The Court: That does not make any difference.

Mr. Hughes: Well, your Honor—

The Court: I cannot conceive of any reason why a document of this nature would not be admissible in evidence in a suit of this kind. I have read your memorandum with great care on this subject. I have read the United Shoe Machinery case, and I may say that I agree heartily [fol. 861] with Judge Wyzanski's reasoning in it, and it seems to me that this document is clearly within Judge Wyzanski's opinion in that case.

Mr. Hughes: Your Honor, are you taking it under 1732?

The Court: I am taking it just generally. I am not taking it under 1732. This is my judgment. It has very little to do with a 1732 situation. This whole area is fairly muddled and I don't think you can put it in a lot of pigeonholes—

Mr. Hughes: I just want to add, your Honor, that I do not think there has been any proof offered of any adoption of this document by Hazel-Atlas.

The Court: You are overruled.

(Government's Exhibit G781 for identification received in evidence.)

Mr. McManus: That is all we have from Mr. Algeo.

[fol. 862] Mr. Hughes: May the witness have this Exhibit G-781?

Mr. McManus: I would like to have one myself. Could you show it to him up there, if you don't mind?

The Court: Mr. Algeo can have my copy. It is slightly more legible anyway.

Recross-examination.

By Mr. Hughes:

Q. Now, if you take the first paragraph of this memorandum, Mr. Algeo, you there state that you had told these associates of yours that you intended building a plant in the Chicago area and in the New York area, and that

"We expected at that time to have the Chicago plant in operation in 1954"; do you see that?

A. Yes, sir.

Q. In other words, in 1953 you had told them you expected to have a plant in operation in Chicago in 1954; is that correct?

A. Yes, that is correct.

Q. And actually, you didn't have that plant in operation in 1954, did you?

A. No, sir.

Q. And you go on to say, "Unfortunately the building of the Chicago or Plainfield plant has been deferred due [fol. 863] to the fact that the estimated cost was far, far greater than we had in mind, and we thought we had a pretty fair idea as to what a plant would cost."

Do you recall what idea you had at that time as to what the plant would cost and what the estimates actually proved to be?

A. Well, my recollection is sort of hazy, but we figured roughly a one-tank plant cost three or three and a half million dollars, and I forget, but the estimate we got on the Plainfield was, I forget, five million dollars, something like that. It was far beyond any idea we had.

The Court: In other words, practically a third more than your estimate, at least?

The Witness: Yes, it was a third or a half more.

Q. So that in 1954, as you were addressing your associates, the company, as a matter of policy, had at least deferred going ahead with this Plainfield plant; is that correct?

A. We deferred it at least temporarily, yes.

Q. Then you went out and got additional estimates, did you?

[fol. 864] A. Yes.

Q. And did these additional estimates prove to harmonize substantially with the estimates that you had originally gotten?

A. I can't answer that. I don't remember enough about it.

Q. Well, can you remember sufficiently to tell me that?

A. I think—my recollection is that the final estimate

that we had was approximately the same as the first, but we went ahead anyway. That is my recollection of it.

Q. And when did you go ahead?

A. You are pinning me down to dates here. I think we started around the first of the year 1956. That is my recollection.

Q. And that building was completed subsequent to the merger between Continental and Hazel-Atlas; is that correct?

A. Yes, that is my recollection of it.

Q. Now, you also refer to the fact that you had had opportunity for making a deal for the Gas City plant of Knox Glass and that you took an option on that plant. Actually, that option was never exercised, was it?
[fol. 865] A. No.

Q. Did you have any plans with reference to some sort of improvement at Blackwell, some such place as that?

A. Not Blackwell. Blackwell blew down. What time are you talking about?

Q. Now Blackwell was located where?

A. Blackwell, Oklahoma.

Q. And you had a glass plant there, in Blackwell?

A. Yes.

Q. And what happened to that?

A. Well, they had one of these cyclones and it practically blew the plant away.

Q. It was a total loss, wasn't it?

A. Virtually a total loss.

Q. And from an insurance standpoint it was a total loss, wasn't it?

A. Yes, virtually so.

Q. You recovered your full insurance; is that right?

A. That is my recollection. I had nothing to do with insurance, but we got the insurance.

Q. And the proceeds of that loss were used as part of [fol. 866] the funds necessary to finish the Plainfield construction; isn't that correct?

The Court: May we have some water for the witness, please.

A. Yes. I recollect that the two things tied together.

Q. You don't remember how much it got for that Blackwell loss, do you?

A. No, sir. That was not my bailiwick. I don't know. I probably knew at the time, but I forget.

Q. Now, you also told that group that as a preliminary to expanding into New York you had rented certain warehouses at Kearney, New Jersey, and in Chester, Pennsylvania; is that right?

A. That is correct.

Q. And you regarded those warehouses as simply a stopgap, did you not?

A. That is correct.

Q. And by that you meant that as far as you were concerned you were looking toward the day when you would actually have a plant in the New York area?

A. That is correct.

Q. And in the meantime it helped to alleviate the situation to have some warehouses there where you could [fol. 867] ship glass from your Pittsburgh area into these warehouses and thereby improve service; is that right?

A. That is correct; yes, sir.

Q. And it was your view that as a result of that you managed to hold on to some customers you would have lost otherwise; is that right?

A. Yes, that is correct.

Q. And thus far there has been no plant built in the New York area, and you are still operating out of these warehouses, so far as you know?

A. Well, as far as I know, but I am out of touch with the situation now.

Q. And did you also acquire a warehouse at Rockdale, near Chicago, also as a stopgap operation in the Chicago area?

A. That is correct.

Q. And substantially for the same reasons that you have outlined with reference to New York?

A. That's right.

Q. And then you went on and told these gentlemen, "We have no specific plans for further expansion at the moment except at Plainfield."

Do you recall those remarks?

[fol. 868] A. Yes, sir.

Q. And that was in January 1954. So that as of that time the only expansion then in contemplation was this Plainfield plant; is that correct?

A. Yes, in a specific way. We had other visions beyond that.

Q. Yes.

A. But—

Q. But I am getting away from the realm of visions and down to the intense practicalities of the situation.

A. Yes, that is correct.

Q. Now you go on to advise these gentlemen that you have added to "Our decorating facilities at Clarksburg"; do you recall that reference?

A. Yes.

Q. And the decorating facilities you referred to there had to do with your pressed ware, did they not?

A. That's right.

Q. They had nothing to do with glass container manufacture; those decorative facilities had nothing to do with glass container manufacture?

A. That is correct. They had to do with the production of our Clarksburg plant, yes.

[fol. 869] Q. Now, you go on to say that "Last year," which would be 1953, "I spoke of our handicap in not having business in certain fields, for instance, in the carbonated beverage field."

Actually, you didn't have any business in the carbonated beverage field, did you?

A. No.

Q. And at that time you had practically no business in the beer bottle field; isn't that correct?

Mr. McManus: Excuse me, your Honor. The only reason I am going to interrupt Mr. Hughes is if he is going to read from this document, which is all right with me, I wish he would read complete sentences, and I object to him breaking off in the middle of a sentence.

Mr. Hughes: Well, I didn't think I was reading from it.

Mr. McManus: You are not reading from it?

The Court: I overrule the objection. The document speaks for itself. It is in evidence.

Q. I say, at that time you had practically no beer bottle business either, did you?

A. Nothing substantial.

[fol. 870] Q. No.

A. Nothing substantial. We never did have any substantial amount of beer bottle business.

Q. You told them that you were under a handicap in not being in the amber field, didn't you?

A. I guess I put it that way.

Q. And when you were referring—

A. Oh, yes.

Q. —when you were referring to the amber field, what did you mean when you were referring to the amber field?

A. When I wrote that letter it is apparent that I did not have beer bottles specifically in mind. Those beer bottles are amber. That is the big amber business.

Q. You weren't thinking about amber beer bottles when you used that expression, were you?

A. That is what I am saying. Our amber capacity—I speak two kinds, one for which we have sufficient business, and the other which operates spasmodically. I think that is the word I used—yes. Those two kinds we had were relatively small in size. They were not capable of producing beer bottles, which is a big tank item, at a [fol. 871] low cost. We couldn't have afforded to make beer bottles in those tanks. What I was thinking of was amber business in other fields. If I remember rightly I had specifically in mind amber wide mouth items going to the drug, medicinal trade, pill jars, stuff of that kind. I did not have in mind, I am certain, beer bottles, because we couldn't have made beer bottles economically on those relatively small tanks.

Q. Now, Mr. Algeo, from your viewpoint at that time there were also drawbacks to going into the carbonated beverage field, were there not?

A. Yes.

Q. Now, would you tell us what those drawbacks were, the problems involved?

The Court: Now, Mr. Hughes—

Mr. Hughes: Yes, I see that.

The Court: I have to rise now. I have this quite important meeting.

Mr. Hughes: Yes, I know you do.

The Court: Of the judges, and I have got to go to it. So that I am afraid we are going to have to take an [fol. 872] adjournment until tomorrow morning at 10:30.

Mr. Hughes: Yes.

Can we resume with Mr. Algeo tomorrow, your Honor?

The Court: You can resume with Mr. Algeo then, and I will have to ask Mr. Mandelbaum to come back at that time.

We will take an adjournment until 10:30 tomorrow morning.

(Adjourned to June 21, 1960, at 10:30 o'clock a.m.)

[fol. 873] New York, June 21, 1960; 10:45 o'clock a.m.
Trial resumed

The Court: Now, I take it the gentleman who was under cross-examination, Mr. Algeo, should resume the stand at this point.

Mr. Algeo, will you resume the stand, please?

JOHN S. ALGEO, resumed.

The Court: Mr. Algeo, you will remember you are still under oath.

The Witness: Yes.

Recross-examination continued.

By Mr. Hughes:

Q. Mr. Algeo, when we recessed yesterday afternoon you were about to tell us of the problems of a glass container manufacturer going into the business of making carbonated beverage bottles.

The Court: Mr. Hughes, before you do that, will Mr. Algeo need this document of his before him?

Mr. Hughes: I think not, your Honor.

[fol. 874] The Court: Very good.

Q. (Continuing) Can you tell us what the problems would have been that you faced in embarking on the carbonated beverage bottle business?

A. Well, to begin with, we were always food-minded. That was the bulk of our business. We didn't—but after the machine era started we didn't make bottles until about 1920, '21, when we acquired a machine that was capable of making bottles. But those bottles made during that period were mostly food bottles. We had never made by that time liquor bottles, beer bottles, wine bottles or carbonated beverage bottles.

After Prohibition ended we began to make liquor bottles. We got some beer bottle business, and quite a large volume of wine bottles, mostly on the Pacific Coast, the wine bottles. But we didn't attempt carbonated beverage bottles at that time, that is, directly after repeal.

At the time I wrote that letter, which was '54, we had been thinking of further diversification, and we considered the carbonated beverage field. Well, to our way of thinking there were a number of problems connected with the [fol. 875] carbonated beverage field. For one thing, the big accounts, such as Coca-Cola, were—the company, the Coca-Cola Company, for example, issued a franchise to a glass container manufacturer to make those bottles. That was the term we used, "franchise."

Q. In other words, they had a design patent on the bottle; is that correct?

A. Yes. They issued franchises to a certain glass company to make those bottles.

Q. That bottle has a distinctive appearance; is that correct?

A. Well, yes, all of them.

Q. And color?

A. And never having been in the carbonated beverage field, we didn't have any franchise or any right to make a bottle for these large companies who operated in that manner.

There was other carbonated bottle business, but they were local accounts, not national. Of course, we didn't know much about the carbonated beverage field; we had never been in it; we didn't know much about it, but the stories we got—mostly the credit rating of these local

companies was poor. That is one reason why we had not [fol. 876] been interested.

Then, from our point of view, there was another obstacle. Carbonated beverages create a great internal pressure in the bottle, which was the reverse of the vacuum that was created in food packing. We were accustomed to the vacuum, but carbonated beverage had an internal pressure, that went outward, and from our point of view there was a trick about making carbonated beverage bottles, and we had never been in that business, and that deferred us to some extent.

Well, we had decided to try to get into the carbonated beverage field, at least in a small way. At the time I wrote that letter—I am permitted to refer to that letter, am I not?

[fol. 877] Q. Yes, if you would like to.

A. At the time I wrote that letter, which was in '54, we had made a few, relatively few, carbonated beverage bottles, and we had made them successfully. We had not encountered any trouble.

And at the time I wrote the letter we were thinking of diversifying and getting into other lines, and I brought up the subject of this carbonated beverage business, and I made the statement in that letter that we had demonstrated the fact that we could make them successfully.

That is about all there is to it.

Q. But the fact is that up to the time that you retired from the company Hazel-Atlas had not gone into the carbonated beverage bottle business to any substantial or significant degree?

A. That is correct, yes.

Mr. McManus: I object to that unless there is a definition of "substantial." There will be statistical data here to show what that was.

The Court: Then the statistical data will show it, but I have a general idea of what "substantial" means in this connotation.

Q. Mr. Algeo, in your explanation you said that when [fol. 878] you entered the narrow neck field you were thinking primarily of the food products?

A. Yes, sir.

Q. Now does that mean such things as catsup and vinegar?

A. Yes, sir.

Q. And syrup bottles?

A. That is correct.

Q. Can you think of any other food products that you had in mind when you were referring to food products?

A. Well, do you mean categories of the food products in addition?

Q. You were telling us about narrow neck bottles. Were those the principal categories for which you made narrow neck bottles in the food line?

A. Well, I will add to that—

Mr. McManus: Your Honor, I would like to object to that question. We are using vague terms here.

Mr. Hughes: I will withdraw the question, your Honor.

Q. Mr. Algeo, will you name for us, if you can, the products for which you made narrow neck bottles in the food line?

A. In the food line?

[fol. 879] Q. Yes.

A. Well, we made the catsup bottles, chilli-sauce bottles, vinegar bottles, syrup bottles—

Mr. Handler: Your Honor, could the witness speak just a little louder?

The Witness: Yes, try to keep your voice up.

A. (Continuing) Syrup bottles, salad dressing bottles, and I believe those were the chief categories.

Q. Yes.

A. All of those categories I mentioned were quite large relative to the total.

Q. Would you tell us the principal categories of products for which you made wide-mouth containers?

A. Well, most of our wide mouth was also for food. Do you want me to specify the categories of the food products?

Q. Yes, I still have food in mind.

A. Well, jams, preserves, pickles, mayonnaise and salad dressings of various types; maraschino cherry bottles, olive bottles—we called them bottles but they are in the

wide-mouth category—olive bottles and jars, mustard. There was a multitude, and I believe I have mentioned the chief ones.

Q. Yes. That is all that I was really after.
[fol. 880] A. All right.

Q. Now, Mr. Algeo, isn't it true that up to the time of the acquisition of Hazel-Atlas by Continental most of the Hazel-Atlas wide mouth machines were Miller machines?

A. Most of the wide-mouth machines were, yes.

Q. And could the Miller wide mouth machines be converted to make narrow neck containers?

A. No.

Q. Isn't it also true that at the time of the acquisition most of Hazel's machines for making narrow neck containers were Lynch machines?

A. That is correct.

Q. And could Lynch machines be converted to make wide mouth containers?

A. I don't believe that the type of Lynch machine we had at that time could be converted. I am not an engineer and I can't answer that specifically, but I don't believe they could.

Q. Isn't it true that neither the Miller machines nor the Lynch machines were as efficient as the Hartford IS machines?

A. Will you ask that again?

Q. Isn't it true that neither the Miller machines [fol. 881] nor the Lynch machines were as efficient as the Hartford IS machines?

A. At the time of the acquisition?

Q. Yes.

A. That is correct.

Q. With respect to the IS narrow neck machines that Hazel Atlas may have had at the time of the acquisition, isn't it true that those machines were older models which were not readily convertible to wide mouth?

Mr. McManus: Your Honor, I object. This witness is not a technical man.

The Court: If he knows, I will allow him to answer. If he doesn't know, he can say so.

A. Well, I am not an engineer. I think the answer to that—in my opinion, the answer to that is no, they could not be.

Q. Isn't it true that opal glass is extensively used in the manufacture of glassware?"

A. Yes.

Q. You used the word "glassware." Will you just define that term for us and what it embraced?

A. Well, to us glassware comprehended tableware, kitchenware, decoratingware such as vases, and also [fol. 882] other non-container items.

Mr. Hughes: I have no further questions.

The Court: Any further questions, Mr. McManus?

Mr. McManus: Yes, sir, I would like to clear up a couple of things.

Redirect examination.

By Mr. McManus:

Q. Mr. Algeo, could your Clarksburg plant make glass containers and did it?

A. To a small extent. Just a second now. You say containers?

Q. Glass containers.

A. I think you mean bottles and jars, don't you?

Q. Well, I mean—

A. Let me explain: Our Clarksburg plant made many containers in the way of pressed tumblers which were used as containers for foods and so on.

Q. I want to clear up another thing. As I understood you testified that you had certain small tanks for making amber medicine bottles, is that correct?

A. I didn't say medicine bottles.

Q. What did you say?

A. Snuff bottles.

[fol. 883] Q. You said that those tanks were not readily convertible to amber tanks for making beer bottles.

Mr. Hughes: I object. That was not the testimony. That was not the way he explained it.

The Court: I will let the witness answer with the idea

that he can correct any statements of fact in the question, if there are any.

A. Ask that question again.

Q. You say that you had certain small tanks that you had planned to use for the manufacture of amber snuff bottles, is that correct?

A. Well, we had made the snuff bottles for many years. Ask me another question now. Go ahead.

Q. Let me ask you this: You had a number of tanks which could be used for the manufacture of amber glass, is that correct?

A. Yes, sir.

Q. Do you recall about how many tanks Hazel-Atlas had at the time you left?

A. My recollection is about 28 or 29.

Q. Could all of those tanks be convertible to the manufacture of amber glass?

Mr. Hughes: May I have that question again, please?

[fol. 884] (Question read.)

A. Why, yes, they were convertible.

Q. You listed a number of foods for which Hazel-Atlas made glass containers. Your company made baby food jars?

A. Yes.

Q. And this is at the time of the acquisition?

A. Yes.

Q. Soluble coffee jars?

A. Yes.

Q. Fruit jars?

A. You mean home canning jars?

Q. I am talking about jars for food processors, fruit jars.

A. Yes.

Q. Also vegetable jars?

A. Yes.

Q. Fruit and vegetable juices, jars or bottles?

A. Yes, to some extent.

Q. Honey jars, jars for honey?

A. Yes.

Q. Peanut butter jars?

A. Yes.

Q. Syrup jars—jars for syrup?

[fol. 885] A. Well, syrup was packed in bottles, not jars.

Q. Syrup bottles?

A. Yes.

Q. Jars for seafood specialties?

A. Yes, to some extent.

Q. Soup products?

A. Soup?

Q. Soup, yes.

A. I don't remember any soup accounts.

Q. Bird seed jars?

A. I don't recall.

Q. Beef steak?

A. Yes, we made beef steak jars. I remember that.

Q. You did make at the time of the acquisition beer bottles, is that correct?

A. Yes.

Q. Returnable?

A. Yes.

Q. Non-returnable?

A. Yes.

Q. Soft drink bottles?

[fol. 886] The Court: Tell me, this, before we go on:

What is the difference between the returnable and the non-returnable beer bottle?

The Witness: You are speaking to me, sir?

The Court: Yes, sir.

The Witness: A returnable beer bottle is a bottle that was used and then sent back to the brewery and filled again and reused.

The Court: Yes, I understand that, but what makes a bottle non-returnable as distinguished from returnable?

The Witness: Well, the non-returnable bottles are made of much lighter weight and they are not susceptible to being reused; they will break in shipping.

The Court: I see. They are not as high a quality or standard in the sense of durability?

The Witness: In terms of durability, no.

Q. Prescription bottles?

A. No.

Q. Medicine bottles?

A. Yes.

Q. Powdered medicine bottles, bottles or jars?

A. Yes.

Q. Bottles for pills, for medical pills?

[fol. 887] A. Yes.

Q. For ointments and salves?

A. Yes.

Q. For Mercurochrome?

A. Well, I think so.

Q. Mouthwash?

A. Yes.

Q. Hair tonic?

A. Yes.

[fol. 888] Massage cream?

A. Yes.

Q. Deodorants?

A. Yes.

Q. Shaving soap?

A. Yes.

Q. Facial soap?

A. Facial soap?

Q. Did you make any jars for facial soap?

A. I don't recall.

Q. Dental floss?

The Court: What is the last one?

Mr. McManus: Dental floss.

A. Dental floss? I don't know.

Q. Solid creams?

A. What?

Q. Solid creams?

A. Solid creams?

Q. Toiletry bottle?

A. Oh, yes.

Q. Liquid cream, toiletries?

A. Yes.

Q. Face powder?

A. I don't know.

Q. Nail polish?

[fol. 889] A. Yes.

Q. Perfume?

A. Yes.

Q. Hair pomade?

A. Yes.

Q. Permanent wave solution?

A. Yes.

Q. Liquid shoe polish?

A. Yes, a lot of them.

Q. Paste shoe polish?

A. Yes—wait a minute.

Q. Paste.

A. Paste?

Q. Paste.

A. Yes.

Q. Furniture polish?

A. Yes.

Q. Silver polish?

A. Yes.

Q. Inks, writing inks?

A. Yes.

Q. Glue and mucilage?

A. Yes.

Q. Liquid bleach and starch?

A. Yes.

[Vol. 890] Q. Light duty detergents?

A. Light duty detergents?

Q. Yes, did you make bottles for light duty detergents?

A. We made bottles for detergents.

Q. You don't know whether it was light or heavy, but it was for detergents?

A. Yes.

Q. Rug cleaners?

A. Yes.

Q. Oven cleaners?

A. I don't know.

Q. Insecticides and disinfectants?

A. Yes.

Q. Space deodorants?

A. Yes.

Q. Paint, some paint and paint products?

A. Yes.

Q. Industrial chemicals?

A. Industrial—

Q. Industrial chemicals?

A. What was that—I don't know that one.

[fol. 891] Q. Chemicals for industry? I mean, did you make glass containers to hold chemicals for industry?

A. I can't recall any. We may have. I don't know.

Q. Laboratory chemicals?

A. Laboratory—I don't recall any.

Q. Artists' supplies?

A. Yes.

Q. Snuff?

A. Yes.

Q. Jobbers' jars and bottles?

A. What kind? What is that last?

Mr. McManus: I will withdraw that one.

Q. These would be a partial list of the glass containers that you made?

A. Yes.

Q. You made a varied number of glass containers?

A. Yes, we did.

Mr. McManus: That is all I have.

The Court: All right, Mr. Hughes.

Recross-examination.

By Mr. Hughes:

Q. Mr. Algeo, you said that you had two amber tanks at Hazel-Atlas at the time when you retired from [fol. 892] the business. Mr. McManus asked you whether you could convert other tanks to the manufacture of amber glass, and you indicated that you could; is that right?

A. Yes.

Q. Now, if you did that, it would be at the expense of some of your flint container business, would it not?

A. Ordinarily, it would.

Q. That is, you can't run out of the same tank flint glass and amber glass, can you?

A. No.

Q. It has to be used for one or the other.

A. That is correct.

Q. So that any manufacturer has to make the choice of

whether he is going to go into products of amber glass or remain with the flint production that he has; is that a fair statement of it?

A. Yes, that is correct.

Q. Now, you have also told us that you made some soluble coffee bottles; is that correct?

A. Yes, we made some.

Q. Now, actually, you didn't go into the manufacture of [fol. 893] soluble coffee bottles to any great extent, did you?

A. Well, at one time or another we had a pretty fair volume of business, but we were not the leaders in that category at all.

Q. Yes. Now, during the war you went into the business of supplying glass containers for coffee, that is, for ground coffee; is that right?

A. That is correct—you say during the war?

Q. Yes.

A. No, we were in it before the war.

Q. Yes. And did your volume increase during the war?

A. Yes.

Q. And did you develop that business and more or less neglect the soluble coffee end of the business?

A. Well, I wouldn't state it that way.

Q. Well, you state, give me the story.

A. Before the war we had developed a rather substantial volume of coffee jar business, the regular ground coffee, not the soluble type.

Q. Yes?

A. During the war the demand for those jars increased greatly, because tins became scarce, and we cultivated [fol. 894] that business during the war just as much as we could. We thought—at least I thought—that after the war this coffee jar business would continue to increase, and we took care of as much of that demand as we could. We couldn't take care of all demand during the war because it was overwhelming. But we did handle a lot of this coffee jar business, because it was a food; we were helping the country; that was part of our effort, war effort; and we expected that that business would continue to increase after the war was over, because a lot of these jars, most of these jars, were reusable as

fruit jars, home canning jars, and most of the demand that we had was from agricultural sections, Minneapolis, St. Paul, Omaha, St. Louis, Oklahoma City—an agricultural area where home canning jars were largely sold.

So we made an effort to take care of that coffee jar business during the war, in the belief that it would continue. We made—we bet on the wrong horse.

Q. What happened?

A. Beg your pardon?

Q. What happened?

A. Well, the way we explained it is this, if I am correct: [fol. 895] This thing called "shelf space" became an important factor in the distribution of products. The supermarket—supermarket business had greatly increased, and this thing they called "shelf space" became valuable. Supermarket could devote only so much space to a product. Well, when it came to coffee jars, the average store had to carry three or four different brands of coffee, maybe a couple of national brands and a couple of local brands. He had to have two or three sizes. And when you got through he had that much shelf space (indicating). Well, if he used jars and cans both, he had that much—he had double that space.

So after the war was over and tincans became available, our jar business began to shrink, and we attributed it chiefly to this thing called "shelf space." They couldn't devote that much shelf space.

Q. Now, in the meantime what was happening in the soluble coffee field?

A. Well, my recollection is that the soluble coffee jar business started during the war. I don't know what year. It was around '42. We did not get in on the original soluble coffee jar business, although it was in our line; it was a wide-mouth jar and just the kind of ware that [fol. 896] we would like to make. But for one reason or another, I don't know just why, we didn't get in on the original orders.

That business developed, but we were devoting our attention, insofar as coffee is concerned, to this coffee jar business that we had already had. But during the war the demand for all kinds of containers was overwhelming. We couldn't take care of all the demand we had, and we

just couldn't—even had we had the opportunity of making the soluble coffee jars, we couldn't have taken any on without shortchanging our other customers.

Q. So that at that time——

A. So——

Q. Excuse me.

A. —during the war we really made no effort to get in on the soluble coffee jar business.

Q. But others were in it at that time?

A. Yes, that is correct.

Q. And developing the business at that time?

A. That is correct.

Q. And expanding it?

A. And after the war we did get into the soluble coffee jar business, not in a real big way, but we got some sub-[fol. 897-913] stantial business. But in the meantime, our coffee jar business went downhill. So we did make soluble coffee jars and a pretty fair volume.

Q. But the fact is that during these war years and immediately afterwards you made the decision to stay with the jar for the ground coffee and regarded the soluble coffee end of the business as secondary to this jar for the ground coffee; is that right?

A. Well, as long as the war lasted, that would be correct, but, of course, we didn't consider that soluble jar coffee business being secondary. After all, we had the others to take care of.

Q. And when the war was over these other glass container manufacturers had already got into the soluble coffee field to a much more substantial degree than you and had the business, so to speak; is that right?

A. That is correct.

The Court: Anything further from Mr. Algeo?

Mr. McManus: No, your Honor, that is all.

The Court: Thank you, Mr. Algeo. You may step down.

The Witness: Am I through now?

The Court: You are excused, yes.

(Witness excused.)

[fol. 914] HORACE RANSOM MUSTARD, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination

By Mr. McManus:

Q. Mr. Mustard, by whom are you presently employed?

A. Pittsburgh Coke & Chemical Company.

Q. What is your position with that company?

A. I am vice-president, secretary, controller and also a director.

Q. How long have you been employed by that company?

A. Since March, 1944.

Q. Have you ever been an officer associated with any glass container company?

A. I was financial vice-president of Neville Island Glass Company.

Q. Did the Pittsburgh Coke & Chemical Company have an interest in that company?

A. Originally it helped finance the company to purchase the \$700,000 first mortgage bonds. Later it made both un-[fols. 915-921] secured advances for working capital and advances secured by accounts receivable, and during that period, but later than the issue of the first 700,000 bonds, an additional \$500,000 worth of bonds was purchased by Pittsburgh Coke & Chemical Company.

Q. Now, Pittsburgh Coke & Chemical prior to this—

Mr. McManus: Excuse me, your Honor, did you want to continue with Mr. Mandelbaum?

The Court: Well, is Mr. Hughes ready?

Mr. Hughes: It is all right if we continue with this witness, but whatever is your Honor's pleasure.

The Court: Mr. Mandelbaum has been here for a couple of days and he ought to be permitted to get away as rapidly as possible.

You may step down for the moment, Mr. Mustard.

(Witness temporarily excused.)

[fol. 922] HORACE RANSOM MUSTARD resumed.

Direct examination continued.

By Mr. McManus:

Q. Now, I believe you had just testified, Mr. Mustard, that at one time you were associated with the Neville Island Glass Company. In what position were you associated with that company?

A. Financial vice-president.

The Court: What was the name of that company again?
[fol. 923] The Witness: Neville Island Glass Company. It may have an "Inc." on the end of it, but I do not recall.

Q. Could you tell us the circumstances surrounding your association with the Neville Island Glass Company?

A. Originally when it was formed and the plant was being built—

The Court: When was it formed, so that I get some idea of what time we are talking about?

The Witness: It was incorporated in the early part of 1946, and some time during 1946 the construction of the glass plant was begun.

By Mr. McManus:

Q. Could you tell us when it was completed?

A. It was substantially completed March 1, 1947.

Q. Now, could you tell us who was the moving party in the organization of that company, and why your company became associated with it, that is, the Pittsburgh Coke & Chemical Company?

A. Yes. Walkerman D. Dugan was president of the Neville Island Glass Company. He organized the company, so to speak. He had dealings with investment bank-
[fol. 924] ers in New York with regard to the sale of common stock of the company. He was put in touch with Pittsburgh Coke & Chemical Company through Frazier-Simplex.

Q. Perhaps if I can interrupt you, Mr. Mustard, what is or who is Frazier-Simplex?

A. Well, I know nothing about them now, but at that time they were glass engineers, as well as I remember.

Q. They are the company that engineered and built the plant?

A. They did engineer and whether they handed out the construction to subcontractors or did some themselves I don't recollect.

Q. They directed Mr. Dugan to your company?

A. Yes.

Q. And then your company became interested, is that right?

A. Yes, because we wanted to sell our byproducts of coke and gas to some industry on Neville Island, because we, Pittsburgh Coke & Chemical, had an excess of such gas—

The Court: Where is Neville Island?

The Witness: 7 miles northwest of Pittsburgh on the Ohio River.

[fol. 925] Q. Did your company assist Mr. Dugan in organizing the Neville Island Glass Company?

A. To the extent of originally purchasing \$700,000 worth of first mortgage bonds, which we offered to do if he could get approximately that amount of money in the sale of stocks.

Q. And did he?

A. He did.

Q. Approximately how much was that?

A. Between six and seven hundred thousand dollars.

Q. And you testified that in March of 1946, I believe, the construction of the plant began?

A. I don't think I stated a specific date. I say that some time during the first half of 1946, roughly, it began.

Q. Did the Frazier-Simplex Company engineer the plant?

A. Yes.

Q. And when was the plant completed?

A. Approximately, substantially completed March 1, 1947—wait a minute, March 31, 1947.

Q. Did you obtain equipment, glass-forming equipment, for this plant?

[fol. 926] A. Pittsburgh Coke & Chemical Company?

Q. Yes.

A. Pittsburgh Coke & Chemical, to my knowledge, had nothing to do with obtaining the glass-forming equipment.

The Court: When did you become associated with the new company, Mr. Mustard?

The Witness: It was approximately mid-summer of 1947.

The Court: In other words, after the completion of the plant?

The Witness: Yes, sir. It was after the completion of the plant.

Q. Were you familiar with the type of forming equipment that this plant had?

A. I know that the company that manufactured the equipment was the Hartford Empire Company.

Q. Do you know if it was a one-tank or two-tank operation?

A. It was a one-tank operation.

Q. Do you know how many lines it had?

A. It had six lines.

Q. The plant was completed in 1947?

A. Yes.

[fol. 927] Q. Did it immediately go into operation at that time?

A. There were start-up difficulties, as I recall, but it went into operation approximately March 31st, 1947.

Q. And what type of containers did it manufacture, to your knowledge?

A. Well, I don't remember all because I was never closely connected with the company from the point of view of operations, but by contamination I learned that they manufactured beers, milks, whiskies and I know that there were many other containers, but I don't recollect what they were.

Q. And for how long a period of time did this plant operate?

A. Approximately 11 months and then a bankruptcy petition under Section 10 of the Bankruptcy Act was filed on March 1, 1948.

Q. During that period of time was it a profitable company?

A. No, it never was.-

Q. Now, during the construction or the building of this plant was the forming equipment and the Lehrs and the equipment for manufacturing glass containers, [fol. 928] was that readily available?

Mr. Johnson: I object to that question. The witness has testified that he did not know anything about that.

The Court: Objection sustained.

Q. Could you tell me approximately, or do you know how long it took to build this plant?

A. Very roughly—

Q. Yes, roughly.

A. It was a long time ago, but I would say close to a year.

Q. A year or somewhat less?

A. I would think so now, yes, sir.

Q. And you became familiar with the operation of the plant by reason of your association with the company?

A. I was associated with Pittsburgh Coke & Chemical Company and not with the glass company from the standpoint of operation.

Q. But after it was operating you became generally familiar with it?

A. What is that?

Q. After it was operating and you were an official—

A. After it had been in operating for some period [fol. 929] of time, yes.

Q. To your knowledge, was there labor to operate the plant available?

A. At that time around Pittsburgh shortly after the war labor was hard to obtain but the Neville Island Glass Company I believe had sufficient labor.

Q. And then what happened at the plant in 1948. You say that up to 1948 it had not operated with a profit, is that right?

A. Until it went into Chapter X it never made a monthly profit but it always had losses.

The Court: Did it ever come out of the Chapter X with a reorganization?

The Witness: No, there was no feasible way found and they went into bankruptcy.

Q. But for the period of approximately one year it was making glass containers for sale?

A. That's right.

Q. Did you know the construction cost of this plant?

A. I believe that the total was around \$1,800,000.

Mr. Johnson: Excuse me, I did not get the figure.

(Answer read.)

[fol. 930] Q. That, of course, did not include the leased equipment from Hartford?

The Court: Wait a minute. What is this about leased equipment from Hartford?

Mr. McManus: He has testified that they leased the forming equipment from Hartford Empire.

The Court: Well, I missed that.

Q. Didn't you so testify?

A. No, I testified that it was obtained from Hartford Empire.

The Court: He did not mention anything about leases.

Q. In what manner was the equipment obtained?

A. By buying a license for both production and minimum royalties under the agreement.

Q. Do you know what the approximate cost of that license was?

A. No, I don't remember.

The Court: In any event, the cost that you mentioned, was that exclusive of the machinery?

The Witness: To this extent, it didn't include any royalties. However, I believe that it included the original license fee and installation of the Hartford Empire equipment.

[fol. 931] Q. After the plant began operations did you or your company, Pittsburgh Coke & Chemical, furnish any more funds for operating this company?

A. Yes, we did. We made secured advances, secured by the pledge of accounts receivable. We also made ad-

vances on open account. We were never paid for services which we rendered, which principally was the furnishing of gas, and in September 1947 we purchased an additional \$500,000 principal amount of bonds from the Neville Island Glass Company.

Q. Do you know how much your company invested in total in this company?

A. Well, no, because some of the advances on the pledged accounts receivable were paid back to us and new accounts receivable were pledged and so forth. However, I know what our total loss was approximately at the time of the bankruptcy.

Q. What would that be approximately?

A. It would be between \$450,000 and \$500,000 plus whatever difference there might be between the actual value of the Neville Island Glass plant without the machines and equipment, and the \$1,200,000 principal amount of bonds with which we bid in the land and buildings of the glass company.

[fol. 932] Q. After March 1958 glass containers were no longer manufactured at this plant, is that correct?

A. It was closed—the plant was closed down immediately, that is correct.

Q. And what became of the forming equipment?

A. It was allowed to stay there until approximately the 31st of March, 1949, by order of the Court in order that there might be a chance for reorganization.

Q. But was never reorganized?

A. It never was.

The Court: What happened after, was the equipment recaptured by Hartford Empire?

The Witness: Yes, sir.

Q. And from that time the plant was never operated as a glass plant?

A. That is right.

Mr. McManus: That is all I have.

The Court: All right, Mr. Hughes or Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Mustard, you have stated that at some point, I believe you said in 1948, the company filed, that is Neville [fol. 933] Island Glass Company, filed a voluntary petition in bankruptcy?

A. Under Section 10 in 1948.

Q. Under Section 10 in 1948?

A. Yes.

Q. And do you remember who started that proceeding? What Court?

Q. Yes.

A. The Federal District Court.

Q. In Pittsburgh?

A. Yes.

Q. And in due time a trustee was appointed?

A. Yes.

Q. Do you remember his name?

A. There were two: Joseph—and his middle initial I don't remember—Bialas, and Richard M. Marshal, who was president of Pittsburgh Coke & Chemical Company as operating trustee. Bialas was the disinterested trustee.

Q. Were hearings held?

A. I suppose the Court directed that the hearings be held and hearings were held.

Q. Were the hearings actually heard before the Court? [fol. 934] A. No, before a Special Master.

Q. Before a Special Master appointed by the Court?

A. Yes.

Q. And this Master took testimony on many aspects of this company's business?

A. Very many, yes, sir.

Q. And, as a matter of fact, he submitted a complete report of the company's business?

A. It seems to me that he did, yes.

The Court: In other words, he not only took testimony but there was some sort of report rendered by the Special Master?

The Witness: There was a stenographic report of the hearings.

Q. And he examined into the questions of the possibility of reorganization of the company?

A. I don't know what report he may have made to the District Judge.

Q. But, in any event, a report was made?

A. The trustee made a report.

Q. The trustee made a report?

A. Yes, to the District Judge.

[fol. 935] Q. On the possibility or feasibility of a reorganization?

A. Yes.

Q. And, in any event, I think you have testified that the company, Neville Island Glass Company, never was reorganized?

A. That is true.

Mr. Johnson: I would like to have this document marked for identification.

(Marked Defendants' Exhibit J for identification.)

Mr. Johnson: Your Honor, I hold in my hand, Defendants' Exhibit J for identification, a copy of a petition of the disinterested trustee for direction as to form and manner of submission of trustee's report and statement under Section 167(5) of Chapter X of the Bankruptcy Act and related matters, to which there is also attached an order of the Court and a report and statement of the trustee.

The Court: This is a 167 report of the trustee?

Mr. Johnson: That is correct.

The Court: Yes.

Mr. Johnson: Which document has been certified by James H. Wallace, Jr., Clerk of the Eastern District [fol. 936] Court for the Western District of Pennsylvania.

Will the Government stipulate that this is a true and correct copy.

Mr. McManus: We will stipulate that it is a true and correct copy of the trustee's report, your Honor. However, there are a lot of rambling statements in the report that we do not—

The Court: Mr. McManus, the best possible evidence as to what happened with this company comes from the

trustee's report in a reorganization proceeding which the Court will take in full.

Mr. McManus: I would think possibly the best evidence would be Mr. Mustard's testimony.

The Court: It may be, but we have Mr. Mustard's testimony now.

Mr. McManus: I have no objection to the report only in so far as it conflicts with Mr. Mustard's testimony.

The Court: Maybe the other side offers it in so far as Mr. Mustard's testimony conflicts with the report.

Mr. McManus: But they have a chance to cross-examine Mr. Mustard.

The Court: But this is an official proceeding [fol. 937] with respect to the insolvency of this company, and an official report of the trustee appointed by the Court: I will take it.

Mr. Johnson: I offer it in evidence.

(Defendants' Exhibit J for identification received in evidence.)

Mr. Johnson: Would your Honor like to see a copy of it?

The Court: Yes, I would like a copy, if I may.

Mr. Johnson: I call your attention particularly, your Honor, to certain statements on pages 10, 15, 16, 17 and 26.

The Court: Of the 167 report?

Mr. Johnson: Of the 167 report, yes.

The Court: I take it that the petition and so forth is of no particular concern here except as background documents, is that right?

Mr. Johnson: I have the whole file here, but your Honor knows that these documents tend to become very, very bulky.

The Court: Yes.

Mr. Johnson: And this, I believe, tells the story. [fol. 938] The Court: Very good. I am not going to read it now, in any event. You can go ahead.

Mr. Johnson: I have no further questions.

Mr. McManus: We have no further questions of this witness:

The Court: All right, you may step down, Mr. Mustard, thank you.

(Witness excused.)

Mr. Greenberg: The Government's next witness, your Honor, is Mr. Herger.

HOWARD C. HERGER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, Mr. Herger?

A. Port Allegany, Pennsylvania.

Q. You are employed by the Pierce Glass Company?

A. That is correct.

Q. How long have you been with the company?

A. Forty years.

Q. What is your present position?

A. President.

Q. How long have you held that position?

[fol. 939] A. Since 1944, 16 years.

Q. You know all about the company, is that correct, and have known all about it in the last 16 years?

A. Within my ability.

The Court: Within reasonable limits.

The Witness: Yes, sir.

By Mr. Greenberg:

Q. How many plants do you have?

A. One plant.

Q. Where is your plant located?

A. Port Allegany, Pennsylvania.

Q. What are the principal types of glass containers that your company has sold since 1953?

A. Narrow neck and we make wide mouth, general purpose containers.

[fol. 940] Q. What per cent—excuse me, had you completed?

A. Complete.

Q. Can you estimate for us, sir, what percentage of

your business in this period of time has gone into the non-food narrow neck field?

A. 75 per cent.

Q. What type of containers in the non-food field, for what products, for what areas?

A. Chemical and household, medicinals, cosmetics. That is about it.

Q. Sir, has your company, in your experiences with it, ever operated east of the Rocky Mountains?

A. No.

Mr. Hughes: East of the Rocky Mountains?

Q. West of the Rocky Mountains.

The Court: Just a minute. We are going a little fast here.

Mr. Greenberg: I am trying to expedite it, your Honor.

The Court: I take it Port Alleghany is east of the Rockies; is that right?

The Witness: That is correct, sir.

[fol. 941] The Court: And you have never operated west of the Rockies?

The Witness: Correct.

The Court: All right.

Q. Sir, can you estimate for us what percentage of your company's shipments, in your experiences with it, have been sold within a 300-mile radius of your plant?

A. 90 per cent.

Q. How many glass melting tanks—

By the Court:

Q. Port Alleghany, is it in the Pittsburgh area?

A. North of Pittsburgh.

Q. How far away?

A. 165 miles north.

Q. 65 miles?

A. 165 miles.

Q. In New York?

A. No, just below the New York State Line.

The Court: Thank you.

By Mr. Greenberg:

Q. How many glass melting tanks does your company have?

A. Two.

Q. Has your company, in your experiences with [fol. 942] it, manufactured closures for glass containers?

A. Never.

Q. Corrugated shipping containers?

A. Never.

Q. Processing line machinery?

A. Never.

Q. Can you estimate, sir, what percentage of your annual production from 1953 to the present has been transported in corrugated shipping containers?

A. 100 per cent.

Q. Can you estimate, sir, what percentage of your total selling price from 1953 to the present has been represented by shipping containers?

A. Approximately 30 per cent.

Q. What is the size of your sales force at the present time?

A. Five.

Q. How many employees in all do you have at the present time?

A. About 250.

Q. Sir, can you tell us, whether there are any other companies in the glass container industry which you know of, which have operations similar to yours?

[fol. 943] A. Yes, there are several, approximately. I am one of the smallest.

Q. Now, are there others in the same category? Buck Glass?

A. Depends upon what you mean by "category"?

Q. Similar operations, one or two tanks, size of your sales force?

A. Yes, Buck Glass Company, Diamond Glass Company.

Q. Lauren, would you say?

A. Lauren, Foster Forbes.

Q. Liberty?

A. Liberty.

By the Court:

Q. What was your gross in '59, gross sales, roughly, gross or net, whatever the figure is?

A. \$5,000,000.

Q. 5,000,000?

A. Yes.

By Mr. Greenberg:

Q. Castle Hanson, sir, is that another one?

A. I would say so, yes.

Mr. Greenberg: You may cross-examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Herger, do I understand that a greater [fol. 944] percentage of your business is in narrow-neck containers?

A. Correct.

Q. But you do make some semi-wide mouth, is that correct?

A. Yes.

Q. And would you say about 50 per cent of your business was household and chemical?

A. About 50 per cent.

Q. About 25 per cent food products in this semi-wide mouth type of container?

A. That is correct.

Q. And about 25 per cent in toiletries and cosmetics?

A. And medicinals.

Q. And medicinals?

A. Yes.

Q. And do you make the all-purpose detergent bottle? Is that one of your products?

A. As far as I know, yes.

Q. That is, you make—

A. Make the bottles.

Q. Yes. And would you say that most of your customers [fol. 945] have more than one source of supply or use more than one source of supply for their containers?

A. Yes.

Q. You make nothing but glass containers; is that correct?

A. I beg your pardon?

Q. You make nothing but glass containers?

A. Nothing but glass containers is correct.

Q. You don't make any containers for beer?

A. No.

Q. Nor for soft drinks?

A. No.

Q. And you don't make closures?

A. No.

Q. Do you make any sales through jobbers at all?

A. Very limited.

Q. Nearly all through your salesmen; is that correct?

A. Yes.

Q. Now, would you say that competition in the glass container industry was keen and vigorous?

A. Yes, very vigorous.

Q. And do you regard the glass container industry as an industry separate and distinct from the metal can manufacturing industry?

[fol. 946] Mr. Greenberg: I will object to that, your Honor. It clearly calls for a conclusion.

The Court: It certainly does. It calls for an opinion, in essence. I will take this witness's opinion on the subject.

Mr. Greenberg: For what it is worth, your Honor.

The Court: I always take every opinion for what it is worth.

A. In my opinion it is a completely separate business.

Q. And in your opinion, is the glass container industry a completely separate and distinct industry from the plastic container industry?

A. As far as I am concerned, yes.

Q. Now, in selling your glass containers do you ever lower your price to meet the price of cans?

A. No, I have never come in contact with cans' price.

Q. And do you ever lower your prices to meet the price of plastic containers?

A. No.

Q. Now, you have indicated to his Honor that your sales [fol. 947] were approximately \$5,000,000; was that for the year 19—

A. 1959.

Q. —59. And would you say that the sales in that year were greater than they had been, let's say, in 1954?

A. Yes, sir.

Q. And would you say that your sales between 1954 and 1959 were on an ascending trend?

A. Correct; it has been.

Q. And could you give us just approximately the percentage of increase in 1959 over 1954?

A. I would think about 25 per cent.

Q. And would you say that your earnings in 1959 were higher than they were in 1954?

A. Yes, thank God.

Q. Were the earnings between 1954 and 1959 on an ascending trend?

A. They were.

Q. And could you give us some idea of the percentage of that increase in 1959 over 1954?

A. I would say between 30 and 35 per cent.

The Court: You have been operating at a profit during that period?

[fol. 948] The Witness: I have, sir.

Q. Would you say that Anchor Hocking closures are used on your glass containers?

A. I cannot say with certainty, but I believe so.

The Court: Are Continental closures used on your products?

The Witness: I believe so.

Q. And Owens-Illinois closures?

A. I believe so.

Q. Now, you were the president of the Glass Container Manufacturers Institute, were you not?

A. I was.

Q. Can you tell us when you were president?

A. I think 1956. I am not certain.

Q. And you have also been on the board of directors of the Institute?

A. I have.

Q. Are you presently on the board?

A. No, I was replaced one month ago.

Q. How long did you serve on the board?

A. I spent two terms, three years each, and then an interim of three years. Then I went back for another three years.

[fol. 949] Q. And during that period you were active in the affairs of the Institute; is that correct?

A. I was.

Q. Do you know anything about the plastic industry?

A. Nothing whatever, I am sorry to say.

Q. Now, over the past ten years has your company expanded in any way, within the limits of your one-plant operation?

A. Yes.

Q. And will you tell his Honor just briefly and in a general way what the nature and extent of that expansion has been?

A. Prior to 1957 we had but one furnace with six machines on it. In 1957 we built a small end port furnace and put two machines on it. This year we are adding a third machine. That comprises our development.

Mr. Hughes: No further questions.

The Court: Mr. Greenberg?

Mr. Greenberg: Your Honor, the Government wishes to note for the record its objections, and hereby makes a motion to strike all testimony which deals with ascending in- [fols. 950-951] come and ascending earnings until it is connected up with something which makes it relevant. We object on the ground it is totally irrelevant and immaterial to this action as it stands.

The Court: Objection overruled.

Anything further from Mr. Herger?

Mr. Hughes: I have no further questions.

The Court: No, Mr. Greenberg.

Mr. Greenberg: May I have a moment, your Honor?

The Court: All right.

Mr. Greenberg: I have no further questions, your Honor.

The Court: All right, thank you, Mr. Herger. You may step down.

The Witness: Thank you.

(Witness excused.)

[fol. 952] GEORGE W. MEYER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Allison Park, Pa. That is A-l-l-i-s-o-n.

Q. And by whom are you employed?

A. Glenshaw Glass Company.

The Court: G-l-e-n S-h-a-w?

The Witness: That's right.

Q. How long have you been with the company, sir?

A. Oh, some 50 years, odd years.

[fol. 953] Q. What is your present position?

A. President.

Q. How long have you held that position?

A. Since 1911.

The Court: How long?

The Witness: Since 1911, about nine years.

The Court: I am sorry, did you say—

The Witness: I beg your pardon. December, 1951.

The Court: I thought, Mr. Meyer, you were about to qualify for the oldest living president.

The Witness: Where that 1911 came from, I don't know.

Mr. Greenberg: Well, I didn't suggest it to you.

Q. Since 1951, as president, you have become familiar with all of the activities of the Glen Shaw Glass Company; is that correct?

A. I have, and I was quite acquainted with everything prior to that.

Q. And everything prior to that. How many plants does your company have, sir?

A. Just one.

Q. And where is that located?

[fol. 954] A. Glen Shaw, Pa.

Q. Where is that near, what big city?

A. Pittsburgh.

Q. And, sir, was your dollar volume in 1956 under \$10,000,000?

A. It was.

Q. All right. What are the principal types of glass containers your company has sold since 1953?

A. Soft drink bottles, beverage bottles, beer bottles, liquor bottles.

Q. What percentage of your total production does that represent in 1953, just your estimate?

A. Oh, approximately 75 per cent.

Q. Sir, in your experiences has your company operated only east of the Rocky Mountains?

A. That is true.

Q. Sir, would you estimate for us what percentage of your company's shipments have been sold within a 400-mile radius of your plant, say, from 1953 to the present?

A. Oh, a hundred per cent. I can correct that to 99 per cent. We have shipped a few bottles to Cuba prior to the last two or three years.

[fol. 955] Q. How many glass melting tanks does your company have?

A. Four.

Q. From your experience, sir, what would be the average number of forming machines which can run off one melting tank?

Mr. Hughes: Run off from what?

Mr. Greenberg: One melting tank.

Mr. Hughes: In his plant?

Mr. Greenberg: I am talking about—

Q. Well, we will start off at your plant.

A. We have one furnace with five machines; two fur-

naces with four machines and a fourth furnace with three machines—a total of 16 machines.

Q. I was referring to one particular furnace and you broke them up for us. Sir, from your experiences in the industry, generally, can you give us an opinion as to what would be the average number of forming machines which can be run off one melting tank?

Mr. Hughes: I object to that.

Q. Can you, sir?

The Court: Can you give us an opinion on that?
[fol. 956] The Witness: I can give my opinion and my knowledge.

The Court: All right, let's have it.

I will overrule the objection.

A. The average, I would say, it would be five to six machines, although there are furnaces with two machines, as Mr. Herger so stated earlier today.

Q. Sir, has your company in your experiences with it manufactured closures for glass containers?

A. No, sir.

Q. Corrugated shipping containers?

A. No, sir.

Q. Processing line machinery?

A. No.

Q. So then, sir, your earnings depend solely on your sales of glass containers?

A. That is true.

Q. Can you estimate for us what percentage of your annual production from 1953 to the present has been shipped in paper corrugated shipping containers?

A. Oh, I would say 95 to 100 per cent. We do ship a few soft drink bottles in wooden cases the customers send in to us, but that percentage is small.

[fol. 957] Q. Sir, what is the size of your sales force at the present time?

A. At the present time we have about 11 salesmen. We have 11 salesmen.

Q. How many employees in all would you say, including

clerical help, messengers and everything else, do you have at the present time?

A. Clerical help?

Q. Just everyone who is employed with your company?

A. You mean our total employees?

Q. Total.

The Court: Yes.

A. Factory workers?

Q. Everything.

A. In the peak season it runs up to about 700. The average is about 640 for the year.

Mr. Greenberg: Would you mark this—

A. (Continuing) May I add a little bit to the statement you asked me about salesmen? In addition to the 11 salesmen we employ, we also sell about 25 per cent of our volume through two jobbers that we have. One is located in Chicago and the other is located in Detroit.

[fol. 958] Q. That is the extent of it?

A. Yes.

Mr. Greenberg: Will you please mark this for identification, just page 20.

(Marked Government's Exhibit 358 for identification.)

Mr. Greenberg: Your Honor, this purports to be a listing of the members of the Glass Container Manufacturers Institute, and the page I had marked is contained within a publication, or what we believe to be a publication of the Glass Container Manufacturers Institute, and I now show page 20 to Mr. Hughes for the purpose of scanning it.

At the present time, your Honor, I am merely going to mark it for identification, show it to the witness so he has a list in front of him, and he can refresh his recollection as to names of companies which will come out in answer to the next question.

The Court: All right.

Mr. Hughes: Are you just marking it for identification?

Mr. Greenberg: That is all.

Mr. Hughes: All right, and you are confining [fol. 959] your inquiries to this page; is that it?

Mr. Greenberg: Yes, sir.

Q. Now, I show you this list of glass container companies, sir, and I ask you to briefly scan the list, or quickly scan the list.

A. They are familiar to me.

Q. Sir, are there any other companies in the glass container industry which are listed there, which have operations smaller or larger to yours?

Mr. Hughes: Well, I object to that, your Honor.

Q. In your opinion?

Mr. Hughes: I don't think he is qualified to answer that.

Q. Can you give us an opinion of that type?

The Court: First of all, no, this is not a matter of opinion. He is not giving an opinion on anything. If he has certain knowledge about other companies and their operations that he acquired in the course of his business, let's see what foundation can be laid for this question. Ask him some questions.

By the Court:

Q. Are you a member of the Glass Container Institute, yourself?

[fol. 959a] A. Yes, sir.

Q. Container Manufacturers Institute?

A. Yes.

Q. In the course of your business do you come in contact with other companies in your same general area?

A. I would say we come in contact at our annual Institute meetings about twice a year with most of the executives of the companies.

[fol. 960] The Court: Have you acquired any familiarity with the volume that they do?

The Witness: Not too well. I do visit some of the plants at different times and I can observe and see about what their operation is comparable to ours.

The Court: Then let us confine ourselves to the operations that you have actually observed. Confine the questions to those, Mr. Greenberg.

Q. Sir, confining the questions to what you have observed, would you go through that list and tell us the names of the companies which have operations smaller or similar to yours?

Mr. Hughes: I object to the form of that question.

Mr. Greenberg: I will divide it up, your Honor. I will divide the question up, if that is what he wants.

The Court: That is not, I do not think, the basis of the objection primarily, but I will allow him to state any companies whose operations are roughly comparable to his in size, or smaller.

Mr. Handler: That is, based on his own observations. [fol. 961] The Court: This is to be based on your own observations and not from information that was given to you.

The Witness: Yes, sir, I understand.

The Court: Very good.

Mr. Greenberg: Can I just ask one more question, your Honor?

Q. You read the trade journals, do you not?

A. Generally.

Q. And in those trade journals there are frequently announcements as to various improvements in the plants of companies and things of that nature?

Mr. Hughes: Your Honor, I object to this.

Mr. Greenberg: I will discontinue that.

The Court: All right.

Q. Would you go down the list, sir, and within the limitations prescribed, would you tell us the companies which are comparable in size or smaller than yours?

A. With your permission, I will go down the list and give the ones that I know of my own knowledge as being comparable to ours or smaller.

Castle-Hanson Corporation, Chattanooga Glass Company, Diamond Glass Company.

Q. What was that last one?

[fol. 962] A. Diamond Glass Company, Foster-Forbes Glass Company. I will eliminate Fairmount because I haven't been to their plant for 15 years. I know what their size is but I will eliminate that.

Gulport Glass Corporation, Lamb Glass Company, Latch-

ford Glass Company, Laurens Glass Works, Liberty Glass Works, Obear-Nester Glass Company.

Q. Sir, you have skipped Lincoln Container Corporation. Is that a glass container company—

A. I have never been in the Lincoln Container plant. That is part of the Obear-Nester Glass Company.

Q. All right. Obear-Nester was the last one you mentioned?

A. Oil City Glass Company and Metro Glass Company—I haven't visited them for years but I know of their size as result of some contacts with the executives.

Q. Would you tell us the size or—

The Court: No, let him finish what he is doing.

A. Tygart Valley Glass Company.

The Court: Which glass company is that?

The Witness: The last one on the list, your Honor, Tygart Valley.

[fol. 963] Q. Tygart Valley Glass Company is now a division of Brockway Glass?

A. It is now a division of the Brockway Glass Company, yes.

Q. That was a recent acquisition, was it?

A. Yes.

Mr. Greenberg: I have no further questions, your Honor.

The Court: All right.

Mr. Hughes, you may cross-examine.

Cross examination.

By Mr. Hughes:

Q. Mr. Meyer, did you say that you were mostly in the narrow neck field?

A. I did not make that statement but we are primarily, 95 per cent, in the narrow neck field.

Q. Would you say that competition in the glass industry is keen and vigorous?

A. It has always been keen and vigorous.

Q. During all the years that you have been associated with the industry, is that right?

A. Yes.

The Court: Did you notice, Mr. Meyer, any diminution in the keenness and vigor of that competition since the year 1956?

[fol. 964] A. Not a bit. In fact, it has gotten keener.

The Court: It has gotten keener since then?

The Witness: Yes, sir.

Q. You never change the price of your glass container to meet the price of a can manufacturer, do you?

A. We don't know what the can manufacturer's prices are.

Q. You don't?

A. No.

Q. You don't know what the prices are of plastic container manufacturers either, do you?

A. No, I do not.

Q. You cannot charge more than Owens-Illinois does for comparable glass containers, can you?

A. No, we cannot.

Q. You won't take any less than what they charge, is that correct?

A. That is true.

Q. Would you say that your sales were higher in 1959 than they were in 1954?

A. Yes, they were.

Q. And would you say that the percentages of sales have been upward during that period of time for [fol. 965] your company?

A. Yes, I think it is public knowledge that the glass container industry has shown a steady growth in the last five or six years.

Q. I was referring to your company, Mr. Meyer. Has that been your experience from 1954 to 1959?

A. The volume has increased proportionately over the years, and also the earnings.

Q. Would you care to express that in a percentage, what the percentage of increase has been from 1954 to 1959, approximately?

A. I would say approximately 25 per cent.

Q. And have the percentages of earnings also gone up during that period?

A. Yes.

Q. That is, of your company?

A. Yes, of my own knowledge.

Q. I am talking about your company?

A. That is right.

Q. Have you done any expanding of any kind over the last five years?

A. We had four furnaces five years ago but we are making probably 20 per cent more glass this past year than we did back in 1953.

[fol. 966] The Court: Have you found any difficulty in disposing of your additional production?

The Witness: There is always difficulty in disposing of your production, your Honor. That is where the sales department comes in, and our sales department has shown a lot of increased life over the past four or five years and prior to that time—comparatively prior to that time.

Q. Have you began any new plants or have you been thinking about building any new plants?

A. We broke ground two weeks ago in Orangeburg, New York for a new plant.

Q. And can you tell his Honor about what size plant that would be?

A. That would be a single furnace operation.

Q. And how many machines do you expect to use?

A. We will start off with three three machines.

Q. Mr. Meyer, you were referred to Government's Exhibit 358 for identification, and you picked out the names of some companies. Some of those companies do not publish their sales and earnings; isn't that correct?

A. That is true; the same as our own company.

Q. You don't do it and many of these companies that [fol. 967] you mentioned do not do it, is that correct?

A. That is correct.

Q. And in the discussions which you had from time to time with the representatives of these other companies that do not publish their earnings or sales, they do not tell you, do they, what their volume of sales is?

A. No, they do not.

Q. And they do not tell you what their earnings are?

A. That is true.

Q. So that when you testified you were drawing on what you considered to be your knowledge of the size of these companies as you observed them and your effort to compare them with your own operation; is that a fair statement of it?

A. I was only comparing them from a production standpoint; no comparison at all on earnings.

The Court: You made no evaluation of earnings?

The Witness: No, I did not.

Q. Have you ever visited the plants of these other companies?

A. I have.

Q. Would you be able to tell me how many machines [fol. 968] any one of these companies have if I took you down through the list?

A. Not accurately, no.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. Greenberg?

Mr. Greenberg: Just one question, your Honor.

Redirect Examination.

By Mr. Greenberg:

Q. Sir, in the year 1959 were the earnings of your company under \$12 million?

A. Yes.

Mr. Greenberg: I have no further questions.

The Court: All right.

Mr. Hughes: Just one moment?

The Court: You have one more question?

Mr. Hughes: Yes.

(Short pause.)

Mr. Hughes: No further questions, your Honor.

The Court: All right, sir.

Thank you, Mr. Meyer, you may step down.

(Witness excused.)

Mr. McManus: Mr. Hunt, please.

[fol. 969] DEAN B. HUNT, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination:

By Mr. McManus:

Q. By whom are you employed, Mr. Hunt?

A. Oil City Glass Company.

Q. For how long have you been employed by that company?

A. Since 1954.

Q. What was your prior employment?

A. The Pyramid Rubber Company.

Q. Pyramid Rubber Company?

A. Yes, sir.

Q. And what capacity were you employed with Pyramid Rubber Company?

A. As an accountant.

Mr. Hughes: Would you please keep your voice up?

The Court: Mr. Hunt, try and keep your voice up a little more so that these gentlemen in the back can hear you.

The Witness: Yes, sir.

Q. And what is your present position with Oil City Glass Company?

[fol. 970] A. General manager.

Q. You have been general manager since when?

A. Since 1956, four years.

Q. What was your position with Oil City Glass Company prior to becoming general manager?

A. Comptroller.

Q. What occasioned your leaving Pyramid Rubber Company and going over to Oil City Glass Company?

A. I actually had not left them. They still owned Oil City Glass Company.

Q. Pyramid Rubber Company acquired Oil City Glass Company?

A. Yes, sir.

Q. About what period of time was that?

A. 1952.

Q. In what field is the Pyramid Rubber Company?

A. Baby feeding equipment.

Q. And that would be—when you say baby feeding equipment, would you be a little more specific and tell me, is that nursing bottles?

A. Nursing bottles, feeding dishes, appliances, et cetera.

Q. Where is Oil City Glass Company located?

A. Oil City, Pennsylvania.

[fol. 971] Q. And Oil City is located where, in what part of the state?

A. In the Western part, approximately 80 miles north of Pittsburgh and approximately 65 miles south of Erie, Pennsylvania.

Q. Does the Pyramid Rubber Company make any other products other than baby feeding equipment?

A. On occasion.

Q. And what type of products do they make other than that?

A. Rubber sundries, such as bath mats, custom molded products in the rubber industry.

Q. Does the Pyramid Rubber Company publish its annual sales?

A. No, sir.

Q. Would you object to saying whether your sales were over or under \$10 million?

The Court: Wait a minute. Are you talking about Pyramid Rubber?

Mr. McManus: Yes, sir.

The Court: Or Oil City?

Mr. McManus: No, I am talking about Pyramid Rubber Company.

Mr. Hughes: What is the relevance?

[fol. 972] Mr. McManus: I just want to see how big Pyramid is.

The Court: All right, we will let you say how big it is.

The Witness: I can't answer, I am sorry.

Q. You cannot say whether it is or it is not?

A. No.

Q. Now, if we can go back:

Is Oil City Glass Company a division or a separate corporation?

A. It is a wholly-owned subsidiary of Pyramid Rubber Company.

Q. Now we will direct our questions to Oil City Glass Company. How many plants does Oil City Glass Company have?

A. One productive plant and one warehousing auxiliary plant, which would make two.

Q. And they are both located in the same place?

A. In Oil City, Pennsylvania.

Q. And the warehousing plant does not make glass containers, just warehousing?

A. Yes, sir.

Q. Was it formerly a producing plant?

A. Not as far as I know.

[fol. 973] Q. Did Pyramid Rubber Company merge with Oil City Glass Company or—

Mr. Hughes: Your Honor, I object to that. The witness has testified that it was a wholly-owned subsidiary.

The Court: All right. If you are going to ask him that, Mr. McManus, ask him whether he knows and what manner Pyramid acquired Oil City and when it occurred.

You can answer that question, Mr. Witness, if you know.

[fol. 974] Q. Would you answer that?

A. Yes, sir. They purchased the assets of the Oil City Glass Bottle Company in the fall of 1952.

Q. And was that an independent company?

A. It was not. It was a part of the Knox Glass Associates.

Q. Now, does your company make both wide-mouth glassware and narrow-neck?

A. Yes, sir.

Q. And in what field are those two most largely concerned with, either wide-mouth or narrow neck?

A. Approximately 40 per cent of our production is in the wide-mouth field; approximately 60 per cent in the narrow-neck field.

Q. Does your company make products for food containers?

A. Yes, sir.

Q. In the wide-mouth field?

A. Yes, sir.

Q. And does it make beer bottles?

A. No, sir.

Q. Soft drink bottles?

A. No, sir.

Q. Toiletries and cosmetics?

A. Yes, sir.

[fol. 975] Q. Glass containers for those?

A. Yes, sir.

Q. Does it make glass containers for household and industrial?

A. Yes, sir.

Q. And toiletries and cosmetics?

A. Yes, sir.

Q. Now, does it make glass containers in the narrow-neck field for food containers?

A. Yes, sir.

Q. Does it make narrow-neck containers for household and industrial?

A. Yes, sir.

Q. And toiletries and cosmetics?

A. Yes, sir.

Q. And of these groupings could you tell us what is the primary grouping that your company makes glass containers in?

A. Approximately 30 per cent in the food industry would be the primary.

Q. Would be the primary?

A. Yes.

Q. And the other 70 per cent would be in what areas?

[fol. 976] A. Around 30 per cent toilet and cosmetic line, toiletries. Here I have a problem. The baby nursing bottle, depending upon what classification you wish to put upon it, would represent 20 per cent.

The Court: What do you do, sell those to your parent?

The Witness: Yes, sir.

Q. Now, nursing bottles is one of your major items; is that correct, 20 per cent, did you say?

A. Yes, sir.

Q. You operate and make only flint glass?

A. Yes.

Q. You make no amber glass or no opal glass?

A. No.

Q. And you only have one tank?

A. Yes, sir.

Q. Does Oil City make any caps for glass containers?

A. No, sir.

Q. Does the Pyramid Rubber Company make caps for your glass containers?

A. No, sir.

The Court: Except in the sense that they make things to [fol. 977] put over the baby bottles; is that right?

The Witness: Pyramid Rubber Company has other companies, your Honor.

The Court: Oh, I see.

Q. Does Pyramid Rubber Company make the caps for your nursing bottles?

A. Pyramid Rubber Company as such does not make caps for our bottles.

Q. One of Pyramid's subsidiaries?

A. Yes.

Q. Who would that be?

A. Harcort Manufacturing Company.

Q. And you testified, you sell the bottles to Pyramid and they in turn sell it to the trade?

A. Yes, sir.

Q. You don't sell the nursing bottle directly to stores and retail outlets?

A. No, sir.

Q. Does Oil City Glass Company manufacture machinery for putting caps on glass containers?

A. No, sir.

Q. Does your company manufacture shipping containers?

A. No, sir.

[fol. 978] Q. Could you give me an approximation of what percentage of your glass containers are sold in corrugated shipping containers?

A. That we sell?

Q. Yes.

A. In corrugated shipping containers?

Q. Yes.

A. A hundred per cent.

Q. When you transfer your nursing bottles from your

plant to Pyramid, is that in corrugated shipping containers?

A. Yes, sir.

Q. And could you give me a breakdown in an approximation of, a cost breakdown, if you could do it, of what the raw material represents in the final cost of your glass container? Could you give me an approximation?

A. No, sir.

Q. Would you know approximately what your labor cost would be, in a percentage, approximately?

A. Roughly, 30 per cent labor.

Q. Would you now be able to recall what your raw material might be?

[fol. 979] A. It fluctuates to a degree that I would have to give you a figure.

Q. I see. And would you know what your shipping container cost would represent to the final cost of your item, approximately?

A. Approximately 23—20 to 23 per cent.

Q. Now, is most of your production in private mold or is it stock mold, or which?

A. Private mold.

Q. And by that the purchaser will designate the design and the type of container that he desires to have?

A. Yes, sir.

Q. And do you furnish the mold?

A. Yes, sir.

Q. You have your own mold shop?

A. We have our own mold shop.

Q. And do you normally make your own mold?

A. Very few.

Q. Do you have them made outside?

A. Yes, sir.

Q. Are nursing bottles today, to your knowledge, made of any other material other than glass?

A. No, sir—excuse me.

[fol. 980] Q. Yes.

A. Strike that. Plastic.

Q. How many salesmen does your company have, Oil City?

A. We have one salesman on our payroll.

Q. Do you normally sell through jobbers or—

A. We have one salesman and we sell the rest through sales commission men.

Q. Would there be a number of those?

A. We have two.

Q. And what percentage of your glass containers would be sold within approximately 300 miles of your plant?

Mr. Handler: Sold—I didn't get the last part of the question.

Q. Would be sold within 300 miles of your plant?

A. Around 50 per cent, approximately 50 per cent.

Q. If we went out to 500 miles of your plant, could you make an estimate of how many of your glass containers would be sold in that area?

A. 98 per cent.

Q. Are all of your sales east of the Rocky Mountains?

[fol. 981] Mr. Hughes: I am sorry. I didn't hear that question.

Q. Are all of your sales east of the Rocky Mountains?

A. All of our sales are east of the Rocky Mountains.

We have on exception shipped to the West Coast occasionally.

Q. But that would be an occasional shipment?

A. Yes, sir.

Q. And would that be your nursing bottle?

A. We do not sell nursing bottles, only to one customer.

Q. I am sorry. So it would be an incidental shipment that you might make?

A. Yes, sir.

Q. And it could be any one of your lines?

A. Yes, sir.

The Court: How would that come in to you? Would it be an unsolicited order or something of that nature?

The Witness: It would be an order from an account that we would have, who would designate the shipment being made to the West Coast.

The Court: I see.

[fol. 982] Q. Now, you indicated 30 per cent of your production goes into food containers; is that correct?

A. Yes, sir.

Q. And could you estimate what percentage of that is in wide-mouth and what percentage is in narrow-neck, approximately?

A. Approximately 80 per cent of the 30 per cent would be in wide-mouth.

Q. Now, it is necessary as the manufacturer of a wide-mouth container to put a ring or some type of finish up to the neck, up near the neck, so that the cap will fit on; is that correct?

A. Yes, sir.

Q. Are there standard specifications for the finish on glass containers?

A. On most of those that we make there are standards set.

Q. Are there also standards set for the caps to fit the glass container?

A. This I do not know.

Q. Have you ever had an occasion, to your knowledge, where the cap would not fit your glass container?

A. Yes, sir.

[fol. 983] Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Mr. Hughes: Just one moment.

The Court: Yes, sir.

What did you say your total volume at Oil City was, dollarwise, roughly?

The Witness: \$5,000,000.

The Court: \$5,000,000.

Mr. Hughes: Your Honor, could we take a short recess?

The cross-examination is going to be short, but I think it would be helpful if I could have about five minutes.

The Court: Very good. We will take a five-minute recess.

(Short recess.)

[fol. 984] The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Hunt, would you say competition in the glass container industry was keen and vigorous?

A. Yes, sir.

Q. Your Oil City Glass Company entered the glass container business in 1952; is that correct?

A. Yes, sir.

Q. And you started out with one customer; is that correct?

A. Yes, sir.

Q. And at the present time you are operating at capacity, are you not?

A. Yes, sir.

Q. And you are making money?

A. Yes, sir.

Mr. Hughes: That is all.

Oh, one further question, your Honor.

Q. You report your statistical data from time to time to the glass Container Manufacturers Institute, don't you?

A. Yes, sir.

Q. And in making those reports do you report on your sales of these baby bottles that you have described? [fol. 985] Do you include them in the report?

A. Yes, sir.

Q. And under what classification do you carry them as you report to GCMI?

A. Pharmaceutical line.

Mr. Hughes: That is all.

The Court: All right, anything further?

Mr. McManus: Yes, I have just one or two more.

Redirect examination.

By Mr. McManus:

Q. You indicated that you have a one-plant operation and that is making only flint glass.

A. Yes, sir.

Q. I guess it is so obvious I shouldn't ask you, but if you desire to make either amber glass or opal glass you would have to shut down the tank of making flint; is that correct?

A. Yes, sir.

Q. How many employees does your company have?

A. Approximately 380.

Q. Do you have decorating facilities for glass containers?

A. Yes, sir.

Q. And where is that located?

[fol. 986-993] A. In Oil City, Pennsylvania.

Q. And your company, that is, Oil City, only makes glass containers; is that right?

A. Yes, sir.

Mr. McManus: That is all I have.

Mr. Hughes: No further questions.

The Court: All right. Thank you, sir. You may step down.

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[fol. 994] ROBERT S. SOLINSKY, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Solinsky, by whom are you employed?

A. National Can Corporation.

Q. And in what capacity?

A. Chairman of the board and chief executive officer.

Q. For what period of time have you held this position?

A. Well, as chairman of the board, about two years; prior to that, as president for about five or five and a half years.

Q. And how long have you been associated with the can business, metal cans?

A. It will be 52 years the first of July.

Q. And could you tell us what companies you have been associated with just through the years?

A. American Can, Continental Can, Cans, Incorporated, which is a company that I formed of my own, and National Can.

The Court: Before we go any further, I think that the record should note Mr. Goldberg's appearance, if it [fol. 995] does not already do so.

Mr. Goldberg: Thank you. I have already asked him for the copy of this transcript of this witness.

The Court: All right, you will note Mr. Goldberg's ap-

The Court: All right, you will note Mr. Goldber's appearance on behalf of Mr. Solinsky and the National Can Company.

Mr. Goldberg: Thank you, sir.

Q. Now, does your company, that is, National Can, manufacture any product other than metal cans?

A. No, sir.

Q. For how long a period has National Can been in existence?

A. Well, it is an outgrowth of other companies. It has been in business as National Can—it is hard to describe, because it is an outgrowth of many companies—but from its inception it has been in business over 75 years.

Q. I see.

A. Starting with some other name.

Q. You said you were originally with Cans, Incorporated?

A. Yes.

Q. And is that now part of National Can?

[fol. 996] A. It is merged with National Can.

Q. And for what period of time were you with Cans, Incorporated?

A. Started Cans, Incorporated, the first of February, 1939, and merged with National Can December 30, 1952.

Q. Now, was Cans, Incorporated—where was it located?

A. Chicago.

Q. And how many plants did you have?

A. Two.

Q. Were they both in Chicago?

A. One in Chicago and one in Warren, Ohio, which was not a can plant, it was a lithographic plant.

Q. And when you merged with National Can, how many plants did you have?

A. They have four plus our two, made a total of six.

Q. And where were their four located?

A. One was Maspeth, Long Island; Baltimore, Maryland; Hamilton, Ohio; and a suburb of Chicago, Clearing, Clearing, Illinois, which is Chicago.

Q. And since 1952 have there been any other consolidations by National Can?

[fol. 997] A. A few.

Q. Did you consolidated with Pacific Can?

A. We did in about the middle of January, 1955.

Q. And where were Pacific Can's plants located?

A. All in California. They had—they still have—the plants we had there, one at Los Angeles, Sunnyvale, Modesto, San Leandro, and a machinery plant for building can-making machinery at Santa Clara.

Q. So at the present time National Can has plants from the East Coast all the way to the West Coast?

A. Yes.

The Court: That would mean, as I understand your testimony, Mr. Solinsky, that plants of all natures, including machinery plant and lithographic plant—are you still operating the lithographic plant?

The Witness: Yes, we do.

The Court: That would be eleven plants; is that right?

The Witness: We have added more since.

The Court: You have added more since.

The Witness: We have added more.

Q. And will you tell us what plants you have added, [fol. 998] Mr. Solinsky?

A. Well, in order to compete with the large can companies we had to build small plants in areas that we were paying freight to meet competitive prices. So we built the small plants in the following locations:

Marion, Ohio; Cleveland—rented, these are all rented plants, although we built some and we rented locations in other places. I mention those two in Ohio.

We built a plant at Hanover, Pennsylvania, just completed. We bought the machinery and a plant from a canner who wanted to sell his plant and give us his business, which didn't work out entirely as we had planned, but we did this piece of business at Cambridge, Maryland. That is our Eastern.

Then we built a plant at Green Bay, Wisconsin, and we located another lithographing plant at Melrose Park, Illinois, which is another suburb of Chicago, and we have

added a plant at at Yakima, Washington, and Vancouver, Washington, just completed. That is the total.

In the meantime, we had other locations which we had to give up because we only had a limited amount of [fol. 999] equipment, but if we had continued all of the plants we had and added these new plants we might have had more, but we now have nineteen plants.

Q. I see.

A. (Continuing) We do not own any of these plants that we have added. We rent and we use the equipment taken from our other plants in order to be able to start these new plants to meet competition.

[fol. 1000] The Court: In other words, this is something of a decentralization operation?

The Witness: Somewhat.

Q. And you say that you have discontinued some plants?

A. Yes. I would not be prepared to say exactly where they were. I happen to remember one in California but it would be hard for me to give you that exactly.

Q. Now, for the record, could you in a general way tell us about the operation of a tin plant, starting from the tinplate and giving us a general description?

A. It will take quite a while to give it to you in general detail but I can give you an idea of it.

The Court: Just give us the highlights.

A. We buy tinplate and all of the other materials that go into it, like lithographing inks, paints, varnishes, compounds for soldering the side seams, paper and other things for proper packaging and cartons.

This tinplate is put through automatic equipment at a speed depending on the age of the equipment and the up-to-dateness of the equipment. And then in the main or packers' [fol. 1001] cans particularly, we run the cans at high speed automatically, and it is fed through a slipper, depending on the size of the cans, and the ends are made on presses, automatic and other types of presses. The bodies are fed through what we call a body-maker and it then goes through various stages. And in the proper position of the line, the ends are fed in for the bottom to be placed on the can. Then you have a finished can without a top.

Packers' cans are open top or sanitary cans which includes foods, oil and things like that. It comes out a finished can without a top so that the packer after filling the can, puts the top on in about the same manner as we put the bottom on.

The Court: Let me ask you this: Do you supply the tops to go with the open can?

The Witness: We sell them the tops. We sell them as many tops as we sell them cans.

The Court: In other words, the top theoretically is part of the can?

The Witness: The can is not a can without the top.

By Mr. McManus:

Q. And the price of the cans that you make normally [fol. 1002] includes the tops?

A. Normally. Sometimes there is a differential in the can price without the top, that is, the top may be separate but it adds up to the price for the can.

Q. The basic raw material for tincans is steel-coated plate, is that right?

A. Tinplate, steel-coated with tin. Some also is plain steel, black plate, we call it. It is steel without a tin coating. For some purposes tin is not required.

Q. In 1956 were you at that time selling cans both on the East Coast and on the West Coast?

A. Yes.

Q. And were your prices for your cans different on the West Coast than they were in the East?

A. Yes.

Q. Were they higher or were they lower?

A. They are higher on the West Coast than east of the Rockies.

Q. Generally speaking, why is it that they are higher on the West Coast than they are in the East?

A. Well, primarily it goes back to the period when there [fol. 1003] wasn't any tinplate made on the Coast, and the cost of shipping that tinplate to the Coast was greater than in the Middle West and East where there are steel manufacturers and tinplate manufacturers.

Following that, there were a few steel companies, steel plants built on the Coast, and the price was reduced slightly as a result of that, but it costs more to produce tinplate in California than it does east of the Rockies. As a result the price of tinplate is higher even today on the Coast than it is in this section or east of the Rockies, and that causes the higher price.

The Court: Does the differential in the cost of labor enter into that?

The Witness: No, I think—I am not in the steel business, but from the things that I have heard, it is because of the raw materials which they must bring in.

The Court: The raw materials?

The Witness: Yes, sir.

Q. To your knowledge, is tinplate shipped into the West Coast?

A. We ship a great deal in. All of the tinplate that is used out there is not made there, but they meet the competitive prices out there. The price out there is higher than it is east of the Rockies but they meet the competitive prices.

Q. Now, I heard you mention in your testimony here the term "packers' cans" and the term "sanitary cans." Will you explain that?

A. That is a term that started many years ago. It doesn't really mean what it did many years ago. Packers' can is a term used for food cans, for food that comes out of the ground and food that comes out of the trees, like fresh fruit that must be packed immediately. In effect, it is a sanitary can, an open top sanitary can which is used for food packing, whether it be food that must be packed immediately after it is taken from the trees or out of the ground, or dried beans or any of those source of foods, and prepared foods that are manufactured in a plant such as meats and things of that sort. But the same can is also used with some variations in the construction and things of that sort for beer, pet foods and things like that, oil, and many other things.

Q. Are there in addition non-food cans or other cans other than packers' cans?

A. There are.

[fol. 1005] Q. And do you have a general classification for that?

A. Well, they come into many classifications. They are known as general line. As a matter of fact, these items I mentioned such as pet food and oil and beer are termed general line in the can industry. But these other general line items are different types of cans. They are cans with different sorts of fittings and different shapes.

For example, we make paint cans, varnish cans, and grease cans, cans for talcum powder, tooth powder and various cans of that sort, and also the anti-freeze solutions which go into the automobiles, and waxes and polishes.

By the Court:

Q. Would it be a fair thing to say, Mr. Solinsky, that the packers' can is typical of the can when you buy a can of tomatoes?

A. That's right.

Q. That is your packers' can?

A. That's right.

By Mr. McManus:

Q. That is, there is no particular shaping of the can other than it being a cylinder with an open top?

A. That is correct.

[fol. 1006] By the Court:

Q. Then when you get to particular shapes of various cans, such as, for instance, a can of tooth powder, or other shapes, those go into general line, is that right?

A. That's right.

By Mr. McManus:

Q. Would you say that normally packers' cans are used for foods, is that right?

A. Yes, that is right.

Q. Now, Mr. Solinsky, could you tell me approximately what position you are in the industry, first, second, third, fourth or fifth?

A. We are in the third position in the can industry.

Q. And could you tell me now who is in the No. 1 position?

A. From statistical figures that we get through the De-

partment of Commerce and other means of getting figures, including reports which are issued by the different companies, American Can Company is first in the can business, Continental Can second and we are third.

Q. And who is the fourth?

[fol. 1007] A. Well, it would depend on whether you mean can companies that make cans for themselves or for sale.

Q. Let us take the can companies that make cans for sale.

A. Well, I believe that Crown would fit into the fourth place, the Crown Cork & Seal Company who have a can division.

Q. And would you be able to say who would be the fifth and sixth?

A. It would be very difficult but I could give you a general idea of what I think.

Q. All right.

A. Because they run way down from Crown to possibly—I would hate to tell them about their business—but I think it would be Heekin Can Company of Cincinnati.

Q. To your knowledge, American Can sells coast to coast?

A. Yes, sir.

Q. And that is true of Continental Can?

A. Yes.

Q. And your company would be also classified as selling coast to coast?

[fol. 1008] A. We sell coast to coast but we don't have plants in all sections of the country.

The Court: Let me ask you this: what is your overall volume?

The Witness: Well, last year we did \$101,000,000.

Q. And does Crown Cork & Seal Company have plants both in the East and on the West Coast?

A. They have in the East but they only have one plant on the West Coast. That is the Crown plant, and they have two beer lines in that plant, and that is all the cans they make on the West Coast, to the best of my knowledge.

Q. You mentioned Heekin. Do you know the area or areas—

The Court: How do you spell that?

The Witness: H-e-e-k-i-n.

Q. Do you know the areas of the locations of their plants generally?

A. Approximately—they have a plant in Cincinnati. That is their home. They have one in Springdale, I believe is the name of the town, in Arkansas, and they have a plant in Tennessee, and I don't know the name of the town. [fol. 1009] It is in a customer's plant, I believe. They have can lines in a customer's plant or adjacent to it.

Q. Their plants are located generally in the central part of the United States?

A. Correct.

Q. All the companies that you have mentioned to date, do they make both packers' cans and general line cans?

A. Yes.

Q. Do they all make aerosol cans?

A. We do not make aerosol cans. Heekin does not make aerosol cans. The other three do.

Q. Do all of those companies make the vacuum-style coffee can?

A. Only two of them, American and Continental. You are speaking of the collar can, the open collar can, which is the vacuum-style coffee can. Other people make cans for coffee but they are not the popular coffee can. In other words, there is a small order of cans for some special type of coffee which may be made by anybody.

Q. Now, are there other companies—we went down to Heekin, but what are some of the other principal companies [fol. 1010] that you can recall?

A. Well, there are a number of them, but they are all. There may be one in general line cans that might be equal to Heekin but I wouldn't want to speak for them, but I believe the J. L. Clark Company in Rockford is one, and there are many other companies that are down lower in sales volume.

I know of many, possibly ranging from the size of just below Heekin and Clark, of companies that make less than a million dollars worth of cans a year, and there might be up to seventy-five of them in the country, but that is a guess.

Q. I see.

The Court: Mr. Solinsky, what would you judge, as far as you know, to be the volume range of Heekin and Clark?

The Witness: Your Honor, I wouldn't want to be quoted because—

The Court: Then let me ask you this: would they be selling about \$50,000,000 worth a year?

The Witness: No.

The Court: Much less than that?

The Witness: Much less.

The Court: \$25,000,000?

[fol. 1011] The Witness: Probably a little less than that.

The Court: Somewheres in between?

The Witness: I would say a little under \$25,000,000 because it is my guess that the Crown Can Company or the Can Division of Crown, that the sales of the cans would just be a little over \$50,000,000, and there is quite a spread between them and us and Heekin.

Q. Does the J. L. Clark Company makes packers' cans?

A. They do not.

Q. They make just general line cans?

A. They make general line cans and many odds and ends that are not even tincans but relate to the equipment that they use for can-making.

Q. And do you know where their plants are located?

A. They have a plant in Rockford.

Q. Rockford in what state?

A. Illinois. That is their main plant, and they recently, a couple of years ago, merged with or bought a company in Pennsylvania that makes general line cans only. I don't know the name of the town but it is in Pennsylvania.

[fol. 1012] Q. Now, any of the companies that you mentioned, these seventy-five smaller companies, do they operate on a regional or a sectional basis?

A. Yes, I believe they all do. I don't know of any that have more than—well, there may be one that has more than one location, and the others probably have only one location in just a section.

Q. There would be, to your knowledge, no other national company?

A. That's right.

Q. You have covered all the national companies?

A. That's right.

Q. When you were giving us estimates of sizes, there were certain companies, you said, that were making cans for themselves who were important in the industry?

A. Yes.

Q. Do some of those companies also sell to the trade?

A. Yes, sir.

Q. When you were trying to decide whether Crown was third or fourth or fourth or fifth, you had a company in mind that was a captive plant?

A. There has been a controversy regarding the size of [fol. 1013] one company compared with us, and that is the Campbell Soup Company who have made their own cans for many years. We believe that if they were to sell their cans and put a dollar value on it, we would be larger than they.

The Court: But there is some question about it?

The Witness: Yes. They do not sell cans.

Q. They sell no cans?

A. They sell no cans. As a matter of fact, they buy some for some of their products at times, and they have a subsidiary company that we sell some cans to in California.

Q. Are you familiar with the Armstrong Paint Company?

A. Yes.

Q. Do they manufacture cans?

A. They manufacture cans and they buy some and they sell some.

Q. What type of cans do they sell?

A. Paint cans.

Q. And to your knowledge that is all?

A. That is all they make.

Q. Do you know of the B. T. Babbitt Company?

[fol. 1014] A. Yes, I know of them.

Q. Do you know what type of cans they make?

A. As far as I know, and I am quite sure I do know, they make what we call a composite can.

Mr. Hughes: I am sorry, I did not get that word.

The Witness: Composite—fibre paper with metal ends, and we call that a composite can.

Q. The Borden Company, do you know that company?

A. Yes.

Q. They also manufacture cans, do they not?

A. They make the old style milk can that has been in existence ever since cans were first started to be made.

The Court: The great big milk cans?

The Witness: No, the small evaporated milk can. They

have sold milk cans. I don't know whether they have continued with it, but they have.

Q. They do sell some?

A. They have sold, and I don't know whether they still are, but they have sold cans to other milk companies.

Q. And they would be milk cans?

A. They make milk cans only.

[fol. 1015] The Court: What was the name of that company?

Mr. McManus: Borden.

Q. Now, the California Packing Company, is that company engaged in the manufacture of cans?

A. Yes.

Q. Do they make them for their own use?

A. Yes, sir.

Q. Do they sell cans, do you know?

A. They do not.

Q. Do they buy cans?

A. They buy some.

Q. Now, Carnation Milk, are they a manufacturer of cans?

A. They are a manufacturer of milk cans, the old-style evaporated milk cans, and they have always sold cans. They have been known as can sellers to other milk companies over the years, and several years ago they went into the dogfood manufacture, and they made their own cans, and they sell cans. Recently they have gone into selling other types of cans in the packers field.

[fol. 1016] Q. Does the Pet Milk Company also manufacture cans?

A. They manufacture their own cans, not for resale.

Q. And those would be the evaporated milk cans?

A. I believe so. There were a few others who have since gone out of manufacturing their own cans.

Q. But Pet makes the evaporated milk can.

A. Yes, sir.

Q. Does the H. J. Heinz Company manufacture cans?

A. They manufacture their cans in the East. They do not sell any cans. They have a few plants between the East and Middle West who buy some cans, and they buy all of

their cans at their Tracy, California, plant. They do not sell any cans.

Q. How about the Sherwin Williams Company?

A. They make cans for themselves and for resale.

Q. And what type of cans do they make for resale?

A. Well, they make paint cans, oil cans, and what we call the oblong cans for polishes and waxes and such things. They make a full general line of cans for sale.

[fol. 1017] Q. Are you familiar with the Hollingshead Corporation?

A. Yes, sir.

Q. Do they manufacture cans?

A. They manufacture cans for their own use. They do not sell. They buy some.

The Court: For what products do they make them?

The Witness: They make them for various lines of chemicals and waxes and polishes.

Q. Does the Otoe, O-t-o-e, Food Products Company manufacture cans?

A. Yes. They have a very small can operation for themselves only.

Q. And they do not sell, to your knowledge?

A. They do not sell.

Q. Now, Mr. Solinsky, are you a member of the Can Manufacturers Institute?

A. Yes, sir.

Q. And for how long a period of time have you been a member of that organization?

A. I think we joined it in the days of Cans, Incorporated, during the war, about in 19—I am not sure of the exact date, but I would say about 1943 or—about '44, 1944.

[fol. 1018] Q. And have you been an officer in that corporation?

A. Yes. I was president of it for two years.

Mr. Hughes: What was the title? I am sorry. I missed the answer.

(Answer read.)

Q. And what period of time, what two years, sir?

A. I believe it was either in '45, '46, or '46 and '47. I can't remember exact dates.

Q. And are you familiar in a general way with their requirements for membership?

A. In a general way, yes, sir.

Q. You have to be a manufacturer of cans to be a member?

A. Well, yes, you must manufacture metal cans.

Q. Does that organization negotiate with suppliers to the can companies, to get the suppliers to advertise cans?

A. They did at one time.

Q. And they would be contacting the steel companies?

A. They did at one time.

The Court: When was that?

[fol. 1019] The Witness: They discontinued it. They did that back, oh, it's at least six or seven years since it's been done. They do not do that any more.

Q. They negotiated right after the war? Did they do that right after the war?

A. Yes.

Q. And to your knowledge, they carried it up through—

A. For several years.

The Court: Those were the suppliers of tinplate, I take it, mostly?

The Witness: That is correct.

Q. And they would be normally the steel companies; is that right, large steel?

A. Yes.

Q. Mr. Solinsky, could you tell me who first came out with the soft drink can?

A. To the best of my recollection, the Pacific Can Company were the first to manufacture a soft drink for sale, that is, the first to sell soft drink cans. I believe the larger can companies may have been working on the development of such a container, but Pacific was the first to sell can back in '52 or somewhere in there.

[fol. 1020] Q. And your company consolidated with Pacific thereafter?

A. Well, we didn't consolidate—I believe—we didn't consolidate until '55. But there were other factors that came in in connection with that. In the meantime, other can manufacturers got into the manufacture of soft drink cans.

Q. You are presently manufacturing soft drink cans?

A. Yes.

Q. And our American and Continental also manufacturing soft drink cans?

A. Yes.

Q. Do any of the others? Does Crown, do you know?

A. I haven't seen any of theirs, but I would imagine they do, because they make these cans on beer can equipment.

By the Court:

Q. Is the soft drink can roughly comparable to beer cans?

A. Yes.

Q. Manufactured in the same type process?

A. Correct; made slightly different.

[fol. 1021] Q. Is there much more that has to be done with it than with a beer can?

A. Well, made a little different for the reason that the pressure of beer in the can is less than the pressure of soft drinks.

Q. I see, carbonated.

A. It has got to be a little bit stronger for that purpose.

By Mr. McManus:

Q. The lining will probably be different or the lacquer?

A. The lining has to be different for each product.

Q. Has your company contacted the steel suppliers to have them assist in the advertising of this can?

A. No, sir.

Q. Do you advertise, does your company advertise the soft drink can?

A. No, sir. We do not advertise per se. We allow our customers an advertising allowance.

Q. So that your advertising of this type of can through your company is by giving an advertising allowance to the bottler?

A. That's right; to meet competition.

[fol. 1022] Q. And he is then to advertise the soft drink can?

A. That is correct. He would advertise his product in the soft drink tin can.

Q. Now, I forgot to ask you one question about the Can Manufacturers Institute, if I can go back to that.

Do the members in that Institute have voting rights according to their size or number of employees?

A. Number of employees.

Q. And could you tell me how that works out?

A. Well, I can't give you exact figures as to number of employees, but I can tell you something about the memberships.

American Can and Continental Can, who are the largest, have three memberships on their Board of Governors. That is what you are referring to; I presume.

Q. Yes.

A. National Can & Crown have two each. I believe that Heekin and Clark each have one. That is a total of twelve. And I believe there are some—I'm not exactly sure of these figures—but I believe there are some fifteen or so more which are elected from the membership at large.

[fol. 1023] Q. I see. And this is broken down, you say, based on number of employees?

A. Yes.

The Court: Incidentally, how many employees have you got over there?

The Witness: Approximately 5000. We run more than that in our busy season.

The Court: Yes, just roughly.

The Witness: That is roughly.

Q. Would you mind estimating approximately the size of your sales force, Mr. Solinsky?

A. Say that again, sir?

Q. Would you object to telling us the approximate size of your selling force, your sales force?

A. I can just give you a guess on that. I would say that we might have, if you included in and out, inside and outside people, our entire sales force?

Q. Yes.

A. About a hundred.

Q. Does your company sell cans for catsup?

A. No, sir; except—we do not sell cans for commercial sale of catsup, no.

Q. I am sorry. Do you sell your cans to packers, who put catsup in them?

[fol. 1024] A. We sell the size that is used for repacking the No. 10 can for commercial use, rather than for resale.

Q. The No. 10 can?

A. That's right.

Q. Do you also sell this No. 10 to packers of salad dressing and pickles?

A. Yes, for the same purpose, however, not for—

Q. In the No. 10 size?

A. Yes, sir.

By the Court:

Q. Let me ask you this, Mr. Solinsky:

Let's take a packer. Plainly, you know what its products generally are?

A. Yes.

Q. If he ordered, say, 10,000 No. 10 cans—whether that is a big order or a little order—you wouldn't know necessarily, he wouldn't advise you what he was going to put in those cans?

A. He must. We have got to know.

Q. You have got to know that.

A. We sell those cans based on specifications. We must know what is going into the can or we do not warranty the can.

[fol. 1025] Mr. Hughes: Your Honor, it may be helpful to you to have the distinction in mind that I think the witness has in mind. The No. 10 can is the so-called institutional size. I think the witness is distinguishing between the so-called institutional sizes and the so-called consumer sizes.

Am I correct about that?

The Court: You have got to assume, Mr. Solinsky, that I don't know anything about the canning business.

The Witness: I will try to keep that in mind.

Mr. McManus: I think that was my fault, your Honor. I was getting to that.

The Court: All right, perhaps I am anticipating.

The Witness: I shouldn't have used that word.

By the Court:

Q. But what would the consumer type can—remember I referred to what I called the good old-fashioned can of tomatoes—what size cans would those be?

A. Well, they would be in any size up to a No. 10, [fol. 1026] although for some products the consumer might buy a No. 10 can, depending on the size of the family.

Q. What is the capacity of the No. 10?

A. Well, it is actually, depending on the product, the weight of it, it is five-sixths of a gallon.

Q. Five-sixths of a gallon?

A. Yes, approximately the size of it.

Q. And the cans would range, I presume, from half-pints to pints to quarts and ranges in between?

A. If you are going to measure that way, yes, if you are going to use that measuring stick.

Q. What would you call a can, which perhaps erroneously is referred to as a quart can, what number would that be?

A. That would be a No. 3, but the standard can for most products on the shelf would be a No. 2 or No. 303, which is a little smaller than the No. 2.

The Court: Yes.

By Mr. McManus:

Q. Now, do you sell cans for tomato puree or tomato paste?

A. Yes, we do.

Q. In the 303 size?

[fol. 1027] A. Yes, we sell them in many sizes, and the 303 is one.

Q. And you have heretofore testified—

A. I would like to change that statement though. I wouldn't want to say "puree." Tomato products.

Q. Tomato products?

A. Puree may be a product that may go in just a six-ounce can, and on the other hand, other products made of tomatoes would go in all sizes of cans.

Q. Could you tell us, do you know the difference between tomatoe puree and catsup?

A. Well, I know it from taste and looks, but I wouldn't know how to describe it.

Q. It is a tomato product?

A. Sir?

Q. It is a tomato product?

A. That is correct.

Q. And, as you say, you sell the No. 10 can for catsup, and there is no problem in regard to packing catsup in a No. 10 can.

A. Oh, no.

Q. And I think you also said you pack salad dressings and pickles also in No. 10 cans?

A. For institutional purposes.

[fol. 1028] Q. And you have no problems with packing these products in metal cans?

A. No, sir. We do not pack the product. We sell the cans.

Q. I am sorry. You sell the can for packing.

A. Yes.

The Court: When you say "salad dressing," would you pack mayonnaise, for instance, in institutional size cans?

The Witness: They would be packed in institutional size, yes.

Q. Have you ever, or are you presently intending to put any of these products, either catsup, salad dressing or pickles, in smaller cans than in No. 10?

Mr. Hughes: Now, your Honor—

The Court: Wait a minute. He didn't put any products in cans.

Mr. McManus: Excuse me.

Q. Are you, have you in the past or at the present, are you attempting to sell cans smaller than No. 10 for either catsup, salad dressing or pickles?

COLLOQUY BETWEEN COURT AND COUNCIL

Mr. Hughes: Now, your Honor, this I think gets us to the threshold of a question that I think is going to create the problem concerning which we spoke to you at the bench, [fol. 1029] and I object to it if there is going to be an attempt now on generalizing on attempts. What does "attempt" mean, and all that sort of thing? And I think we have reached the point where we are going to run into some problems.

It may be, your Honor, that your Honor might want to discuss with counsel the problem of how this is going to be handled.

The Court: I think that might be well at this stage, in order to avoid possible difficulties. I don't want to get in a position where I have taken a substantial amount of testimony and, for example, I have to entertain or in fact grant a motion to strike on the ground that the defendant hasn't had an adequate opportunity of cross-examination.

I think what we had best do, gentlemen, is to take a brief recess, and I will have Mr. McManus and counsel for both sides and Mr. Goldberg in the robing room, and we can discuss where we go from here.

Mr. McManus: All right, sir.

The Court: In terms of the problems that may arise.

(The following took place in the robing room, all counsel [fol. 1030] being present including Mr. Goldberg, representing National Can Company.)

Mr. Handler: Your Honor, we are very much concerned for the reasons that you have indicated before the recess was taken.

As Mr. Hughes put it, we are on the threshold of going into a line of questions which will produce great difficulty, and we thought it would be extremely helpful if we knew exactly where we are going and what will eventuate from this type of questioning.

The question asks the witness what he plans to do. The next step is to ask him what kind of business he solicits. Then, of course, we must, if we are to be helpful to your Honor, draw a distinction between action and planning, between solicitation and sale. There can be solicitation which is unsuccessful. There can be solicitation that yields only insignificant results. There can be solicitation which is followed by sale.

The Court: That goes into the whole question of Mr. Solinsky's canning business.

Mr. Handler: Precisely.

The Court: And sales program.

[fol. 1031] Mr. Handler: Precisely so.

We want your Honor to understand, we want the Government to understand, we want Mr. Goldberg to understand,

that we couldn't care less about any of their statistical material, from a business point of view. We are not using this trial to get information for our own self-interest. However, we do not want these generalized statements to get into evidence without following up with persistent and comprehensive cross-examination, which will yield the exact facts.

So that our position is very simple:

If we are going into this, I think everybody should understand that we will insist, subject of course to your Honor's ruling, but we will move in the direction of getting all the details, and the only way we can get those details is to have access to the books and records and papers of the company. We prefer not to do it.

The Court: In the first place, have you anything to say to that, Mr. McManus?

Mr. McManus: No, I have nothing to say as to that, your Honor.

The Court: Well, I think that what you should do, and I think no harm can be done at this stage, is to outline the [fol. 1032] course of inquiry that you intend to pursue with Mr. Solinsky at this point.

Mr. McManus: Well, I intended to pursue it to only as far as asking him if he was soliciting business in these particular lines, if he was actually soliciting the business, and if he says, "Yes," that is as far as I intended to go.

The Court: What do you say to that, Mr. Handler? You say that that is meaningless?

Mr. Handler: Well, if he says that he is soliciting business, and your Honor rules that this is meaningless, there is no point in keeping Mr. Solinsky on the stand. If, however, we don't get a ruling that this is meaningless, then we have to ask the witness, "You have said you have solicited business in these various field. Has your solicitation been successful?"

If he says it has been successful, we will then ask, "To what extent? Who are your customers? What is this dollar value of the sales that you have made of cans?"

There is a question here of sections. So we have got to find out where he has been selling, and the witness doubtless is going to say, "I don't remember these details."

[fol. 1033] Then we are going to ask that he come back here with his invoices.

The Court: Well, now, let me come to this: There is no doubt whatsoever in my mind, I think in anybody's mind, that National Can Company is in competition with Continental. That is so elementary we don't have to worry about that.

Mr. Goldberg: Correct.

The Court: What is the purpose of developing the current solicitation of National Can? First of all, what fields do you intend to cover here?

Mr. McManus: Well, I was going—

The Court: What ranges of product?

Mr. McManus: Well, I was asking him in catsups, salad dressings and pickles, if in any of those fields he is trying to sell cans to various packers in those fields.

The Court: Well, he has already testified that he is selling cans, as I understand it.

Mr. McManus: That's right. But is he selling a can smaller than a No. 10 can, I should say, now? Is he trying to get that type of business? That is what we are concerned with. Is he as a can manufacturer trying to get that [fol. 1034] type of business?

The Court: What do you say is the purpose of that testimony and what is its relevance to the issues here?

Mr. McManus: Your Honor, to me it is—

The Court: I am not saying it isn't relevant. I just want to know what your position is.

Mr. McManus: Well, the relevancy is, your Honor, that if he is trying to get business from pickle packers, for example, or catsup packers—

The Court: You say he is trying to get glass business?

Mr. McManus: That's right; and whether he is successful or not, he is in competition with these people. The degree of his success is measured partially by his effort and partially whether they packed them or not. But he is a competitor of those people if he is going around to those food processors and trying to get their business.

For example, the can people are trying to get into the beverage field. It is quite obvious they don't have a big percentage, they don't have a big percentage at all.

But the people in the industry will tell you that is the [fol. 1035] most vicious and the toughest competition in glass and cans today. So the degree of success, the number of units added up is not the only factor to be taken into consideration.

The Court: It is not the only factor, Mr. McManus, plainly, but it is a factor. In other words, let's assume that National Can had been trying for five years—just taking something out of the air—to sell 303 cans for mayonnaise, and they hadn't sold a can. Now that is one set of facts. On the other hand, suppose they started in a modest way and they have gone from a volume of \$50,000 the first year to a million dollars, let's say, the third year or the fifth year. This makes a great deal of difference as to competitive impact, it seems to me.

Mr. McManus: Your Honor, let's go back to the soft drink.

The Court: Of course, in this thing, necessarily, the quantitative element does affect the measure of competition that we are dealing with and the competitive impact of the whole thing.

Mr. McManus: Your Honor, the period of time or the success doesn't necessarily, in my mind, measure the [fol. 1036] competition.

The Court: Well, that isn't the point, Mr. McManus. Your theory is that it is not an important factor, but that is a matter of argument.

Mr. McManus: That's right, and that is what I am arguing now.

The Court: I am not going to hold that the quantity feature is irrelevant. I will take the quantity feature and weigh it against what I would call the qualitative feature and the extent of the effort and the success of the effort generally to determine how important the competitive factor of this thing is, as I must necessarily do.

So that if you are going into this field, this line of inquiry, I would be inclined to say to you that either the door is then open to cross-examination, or the initial inquiry is stricken. You cannot have it both ways. Because the right of cross-examination is essential to any testimony in chief, and if you deny a defendant the right of cross-examination

on testimony in chief that may be relevant, you have denied the defendant, in my judgment, a substantial right.

Mr. Goldberg: This is where I come in.

[fol. 1037] The Court: This is where you come in, Mr. Goldberg.

Now, have you anything to say? Don't hesitate to join in this discussion, because it affects your client's interest.

Mr. Goldberg: I am only thinking in that regard. I don't want to in any way impose upon anybody here, including your Honor. But we certainly are very, very zealous about safeguarding the details of our business with our customers, numbers, and the like.

I have indicated this to Mr. McManus. This is something that is not new, because we think it could be detrimental to us.

I quite agree with Mr. Handler that he is not in this lawsuit merely to pry secrets from us, at least I hardly think so. But nevertheless, my function is to preserve for ourselves the sanctity of our records with your help.

The Court: In the first place, the election is with Mr. McManus as to whether or not he pursues the line of inquiry, because I have, I think, laid down what I consider to be the ground rules for an inquiry of that kind.

Mr. McManus: Your Honor, I am in a quandary now, [fol. 1038] because I can't see what I can do other than attempt to pursue this line of inquiry, because I think it is important to the Government's case.

The Court: All right. Now that being so, we have the line of inquiry being pursued, and under the ground rules that I have laid down.

Now, the next question that arises is, is there anything that can be worked out with Mr. Goldberg that will give sufficient information to the defendants to protect their rights, and at the same time not impinge on the rights of Mr. Goldberg's client? That I have no answer to except to throw it out as a possible solution here.

Mr. Goldberg: Your Honor—

Mr. Johnson: Excuse me.

Mr. Goldberg: Go ahead.

Mr. Johnson: I was going to say to the Court, we don't know yet what the answers are going to be.

The Court: That of course is true.

Mr. Goldberg: You see, Mr. Johnson, this is my problem, that at this moment I don't know the scope of the inquiry into the particular categories of products, because I didn't feel it would be fair to ask Mr. McManus that; I really didn't know how this would come about. If I knew that, [fol. 1039] I could ascertain from Mr. Solinsky if he knew—I don't know even whether he knows—but I have no way of probing this problem at the moment.

The Court: Then I think, gentlemen, so that we can move forward here, the thing to do is to let Mr. McManus pursue that line of inquiry; all the matter will be taken subject to a motion to strike. When we conclude his line of inquiry, then there can be some exploration between you gentlemen and Mr. Goldberg as to what if anything—I am not saying it can be, but it is worth exploring—can be worked out in terms of mutual protection. If nothing can be worked out in terms of mutual protection, I will then hear Mr. Goldberg on the question of trade secrets and the extent to which he feels he needs the protection of the Court. I will then determine the extent to which I will give him that protection.

Mr. Goldberg: I see.

The Court: Now, that seems to me to be where we go from here.

Is there any other suggestion?

Mr. Greenberg: Your Honor, may I ask one question at this juncture?

[fol. 1040] Assuming in the future an arrangement is worked out, whether it is an estimating arrangement or some other type of arrangement, with respect to National Can or Glass, I would assume this would be a two-way street and we would get comparable statistics from Continental Can and each of its divisions as it relates to other companies.

The Court: No, not necessarily at all. It is an entirely separate problem. I have decided each one of these issues as they came along, and when we come to Continental Can I will deal with the Continental Can problem as it arises. But I am not going to tie these things together in a package. We are dealing with specific items of evidence, with specific problems.

Mr. Handler: Your Honor, before we conclude this very helpful conference and adjourn to the courtroom, I would like to be sure as to whether or not I understood Mr. McManus correctly, so we understand the dimensions of the problem and we can do something in preparing about it.

Am I correct in understanding Mr. McManus, that he has assured your Honor that he proposes to ask the witness with respect to the three products that he mentioned—[fol. 1041] pickles, salad dressing and catsup, in consumer sizes? Is that the dimension of the problem that we have before us?

Mr. McManus: That is what you have right now, gentlemen.

Mr. Handler: Well, do you have more?

Mr. McManus: I would assume if we had any more we would have the same problems.

The Court: No, no. You were talking about with Mr. Solinsky?

Mr. Handler: With Solinsky, do we have more?

The Court: With Solinsky do you plan to go beyond those three products?

Mr. McManus: Well, if we include mayonnaise in salad dressing—

The Court: Well, I assume that mayonnaise—

Mr. Handler: It is a matter of four products.

Mr. McManus: Well, salad dressing—if I can name the products, I will name the products.

The Court: Yes.

Mr. McManus: Salad dressing to me gets a little confusing, because I don't know if mayonnaise would be included, a thing like Wesson oil.

[fol. 1042] The Court: Yes. Well, Russian dressing would be included; would French dressing be included? I am just an amateur salad dressing man. I don't like either of them.

Mr. McManus: Well, it would be in those areas, your Honor. That would be, I think, salad dressing.

Mr. Handler: Those four products.

Mr. McManus: I think there might be five. Mayonnaise, salad dressing, whether it is Wesson oil or whatever it is, you have got that oil type product, catsup, pickles and did we have another one, mayonnaise?

The Court: No, you have got mayonnaise.

Mr. Handler: You mentioned that it is in that area.

The Court: All right, that is the dimension of the problem, gentlemen.

Mr. Greenberg: Your Honor, out of the proposed documents, there is a document out of the defendant's files which seeks to define salad dressing to some degree, and it refers to Kraft dressing and other kinds of dressing. It is a scientific report describing an aerosol can.

The Court: Well, we will take salad dressing as a broad [fol. 1043] category, and nobody is going to quarrel at this point whether it is French or it isn't French. You say Russian can't be put in cans?

Mr. McManus: I don't say it can't be. All I say is it is not. I am not going into that area.

The Court: You are not going to go into the Russian field.

Mr. Goldberg: May I ask a question?

Merely as a record of procedure, will it be necessary at this point to state our position, or I think this carries on.

The Court: I think your statement of position, which is on the record, is sufficient at this time. Let me say to you that by failing to make specific objection during the course of this discussion, you will waive no rights and all of your rights will be preserved.

Mr. Goldberg: Very good. That little discussion we had before you in the early morning was not on the record.

The Court: No, that's right, but this is.

Mr. Goldberg: Very good.

The Court: We will have a brief respite, gentlemen, for your own comfort and convenience.

[fol. 1044] (Short recess.)

(The following took place in the courtroom:)

The Court: Mr. Solinsky, will you resume the stand, please?

ROBERT S. SOLINSKY resumed.

The Court: Mr. Goldberg, have you informed Mr. Solinsky about the course of our conversation?

Mr. Goldberg: I did not, your Honor. I did not. And I don't know whether it may not be a good idea. I did not have an opportunity.

The Court: It seems to me, in all fairness to Mr. Solin-

sky, that Mr. Solinsky should be aware of the general tenor of our discussions in the robing room, and for that I will give you a brief opportunity to confer with him before we resume questioning, so that he may be aware of the posture of the things at the moment.

Mr. Goldberg: All right.

The Court: Do you want to take him out?

Mr. Goldberg: Well, I can take him right outside the courtroom.

The Court: Suppose I give you a couple of minutes and [fol. 1044a] let me know when you have talked to him.

Mr. Goldberg: Thank you.

(Short recess.)

[fol. 1045] The Court: All right, Mr. McManus.

By Mr. McManus.

Q. Now, Mr. Solinsky, you have heretofore testified that you had sold cans of the No. 10 size to packers who were packaging catsup, salad dressing and pickles?

A. For institutional use.

Q. The No. 10 size?

A. Right.

The Court: Just let us for the moment, so that the record can be clear, define "institutional use."

What do you mean by that, Mr. Solinsky?

The Witness: Well, the products that go to restaurants, hotels, clubs, and so forth, which are in large containers, and repacked by them in the smaller containers for use in those places.

The Court: As I recall it, the No. 10 can, you said, would have a liquid capacity of three-quarters of a gallon?

The Witness: Actually five-sixths of a gallon.

The Court: Five-sixths of a gallon?

The Witness: Yes.

[fol. 1046] Q. You testified that you had sold to packers No. 10 cans for packaging catsup, salad dressings and pickles?

A. Yes, sir.

Q. Do you also sell the No. 10 cans for Wesson Oil—

Wesson Oil is a trade name, but do you sell the No. 10 cans for that type of product?

A. That isn't the type of can used for what you might call vegetable oils or vegetable compounds which are salad oils. That is not the type of can used for that purpose.

Q. Is it a smaller can or a larger can?

A. No, it is an oblong half-gallon or gallon can.

The Court: With a screw top?

The Witness: Yes, with a screw top.

Q. That would not necessarily fall into the institutional category, would it?

A. Not necessarily.

Q. Are these sold for home consumption, the Wesson Oil type of cans?

A: Yes, they are.

Q. Going back to the catsup, salad dressings and pickles [fol. 1047] and mayonnaise categories, are your sales people offering for sale containers smaller than the No. 10 can for any of those products?

Mr. Hughes: If your Honor please, I object to the form of the question. It seems to me that it should be broken up.

The Court: Yes, I think you better break it up.

Mr. McManus: I will withdraw the question.

Q. Is your company offering for sale any metal containers for packaging of catsup in sizes smaller than the No. 10 size?

A. I do not know of any particular offers of catsup for sale.

Q. Are you offering for sale smaller than the No. 10 size metal containers for salad dressings?

A. Our salesmen are instructed to go out and try to sell cans for that purpose. We have not been successful to date.

Q. Is your company attempting to sell containers smaller than the No. 10 size for pickles?

A. The same answer applies to that.

Q. To your knowledge, are there presently on the market containers smaller than the No. 10 size—

[fol. 1048] The Court: Let us get mayonnaise out of the way first.

Mr. McManus: Excuse me.

Q. Are you offering for sale containers smaller than the No. 10 size for mayonnaise?

A. The same answer will apply to these as to pickles.

Q. And the salad dressings?

A. Yes.

Q. Do you of your own knowledge know that there is presently on the market and presently being marketed pickles in metal cans in sizes smaller than the No. 10 can?

A. Yes.

Mr. Hughes: I object to that, your Honor, and I move to strike it out.

The Court: He asked, did he know.

Mr. Hughes: I beg your pardon.

The Court: That is all you asked him, is that correct?

Mr. McManus: Yes, I asked him if he knew.

The Court: Then he said, yes, he knows. Now the next question is, what do you know?

[fol. 1049] Mr. Hughes: I object to that.

The Court: All right, I will overrule your objection.

Q. How did that come to your knowledge, Mr. Solinsky?

A. I have seen it in my home.

The Court: The answer is that there are such products being marketed in those containers, is that right?

The Witness: Yes, sir.

The Court: And you have actually seen them?

The Witness: Yes, sir.

The Court: That is as to pickles?

The Witness: Yes, sir.

Q. As to pickles, to your knowledge, are there glass containers which are marketed to packers which are comparable to the No. 10 size?

A. I do not know.

Q. To your knowledge, are there glass containers marketed for packers which would fall into the institutional category?

A. I do not know.

Q. To your knowledge, is there catsup in sizes smaller than the No. 10 cans being marketed?

[fol. 1050] A. I have never seen them.

Q. Would your answer be the same for salad dressings?

A. Yes.

The Court: And mayonnaise?

Q. And mayonnaise?

A. Yes.

Q. Now, Mr. Solinsky, going to another subject, and back to the companies which you listed as the principal companies in this field, you testified that you entered this field in 1908, is that correct?

A. That is correct.

Q. Was American Can Company in the manufacture of cans at that time?

A. Yes, sir.

Q. Was Continental Can Company?

A. No, sir.

Q. Do you know when they went into the manufacture of cans, about?

A. I am sorry, I beg your pardon. I was wrong in that statement. Continental were in business in 1908. I am sorry. In order to explain my error, I meant they started after The American Can but they were in business in 1908.

[fol. 1051] And National Can, you testified, was in business at the time you entered in 1908?

A. Under some other name.

Q. Was Crown, the can division of Crown Cork & Seal in business at that time?

A. They were not in the can business at that time.

Q. To your knowledge when did they go into that business?

A. 1935.

Q. To your knowledge, was the Heekin Can Company in business at that time?

A. They were. I would like to change that answer. Heekin may have been in the can business. They were in the can business but whether they sold cans I do not know. They started as the Heekin Can Spice Company and made their own cans, and then went into the can business. Whether they were in it at that time I cannot remember.

Q. Was the J. L. Clark Company in business at that time?

A. Yes.

Q. Of the first six companies that you listed, the only one that has entered since 1908 was Crown in 1935? [fol. 1052] A. Yes, sir.

Mr. McManus: That is all I have.

Cross-examination.

By Mr. Hughes:

Q. What about the captive companies?

A. They were in business, the milk companies, particularly.

Q. But they were not in the can-making business?

A. They were in the can business manufacturing their own cans, not for resale.

The Court: You are talking about the small evaporated milk cans?

The Witness: Yes.

Q. Was Campbell in the can-making business back in 1918?

A. No, sir.

Q. When—

A. 1908 is the time you were referring to.

Q. Was it in 1908, were they in the can-making business then?

A. It was not.

Q. What other—

Mr. McManus: Excuse me. I was not finished with the witness. Are you cross-examining now? [fol. 1053] Mr. Hughes: Yes.

Mr. McManus: I wanted to get one thing cleared up. I hope that you understood my original question.

Mr. Hughes: Perhaps we should have the question repeated.

Mr. McManus: I would be glad to repeat it.

The Court: Wait a minute now, gentlemen. I am sorry, Mr. Hughes, but I don't know what you are talking about. What is the difficulty?

Mr. McManus: Well, I asked the witness a question as to whether the six companies that he listed—

The Court: Yes, I know.

Mr. McManus: I asked him if since 1908 the only entry of those six companies was the can division of Crown, and he said that is correct. I just wanted Mr. Hughes to realize that that was my question.

Mr. Goldberg: May I be heard, your Honor?

The Court: Yes.

Mr. Goldberg: I would like to refresh the witness's mind that there was one other entry that he knows about that he may have forgotten.

The Court: What is that?

[fol. 1054] Mr. Goldberg: There was an entry on the part of one of the glass companies into the can business, and I thought that the record ought to be clear on that point.

The Witness: I did not get the question properly then. The question I thought was whether there were other can companies still in existence at that time. In 1935 the Owens-Illinois Glass Company went into the can business but they are no longer in it.

The Court: Is that what you had reference to?

Mr. Goldberg: Yes, that is what I wanted him to clear up.

The Court: All right, Mr. Hughes.

Mr. Hughes: Your Honor, just so that I am sure that I have the full context of the last few questions to the witness, I wonder if we could have those read back?

The Court: Yes.

(Record read.)

By Mr. Hughes:

Q. You are not, Mr. Solinsky, in a position to state, are [fol. 1055] you, how many pickles are sold in cans smaller than the No. 10 size can?

A. No, sir.

Q. And isn't it a fact that about 1 per cent of the total number of soft drinks sold in this country are sold in the metal cans?

A. I don't know whether that is the figure but it is a very small amount.

Q. It is around that percentage, is it not?

A. It might be less.

Q. Would you say that competition in the can industry is keen and vigorous?

A. Yes, sir.

The Court: What would you say, Mr. Solinsky, with respect to the comparative keenness and vigor of competition in the can industry between 1956 and today?

The Witness: Much, much tougher today than it was in 1956.

The Court: Competition is tougher than it was in 1956?

The Witness: Yes.

By Mr. Hughes:

Q. Would you tell me when or approximately when each [fol. 1056] of the plants which you indicated as additions to your company were built, and fix the time approximately when each of them were built?

A. Going back to our first one, it was Cleveland in about 1954; Green Bay, Wisconsin, 1956—and do you want the names or rather, the dates of acquisitions or mergers?

Q. I was thinking of actual plants as additions.

A. Marion, Ohio, in 1957.

The Witness: I will ask Mr. Goldberg to refresh my recollection on Cambridge because he was involved in the deal.

Mr. Goldberg: May I do that, your Honor?

The Court: Yes.

Mr. Goldberg: I think Marion was 1958 and Cambridge was 1958.

The Witness: I think that is about right. We started building it in 1957 and finished in 1958.

Mr. Goldberg: And you have Yakima.

The Witness: Yakima, Vancouver, started last year and finished this year. Hanover started last year and finished this year.

[fol. 1057] By Mr. Hughes:

Q. And you mentioned Melrose Park?

A. That was in about 1957.

Q. And have you mentioned Cleveland?

The Court: Yes, he has.

Mr. Hughes: No further questions.

The Court: All right, you may step down, Mr. Solinsky. Thank you.

Mr. McManus: Excuse me, your Honor, may I ask one question?

The Court: All right.

Redirect Examination.

By Mr. McManus:

Q. Are your firm's figures published, Mr. Solinsky?

A. Yes.

Q. For the period 1956 to date have your earnings figures gone up or down?

A. Down.

Mr. McManus: That is all I have.

The Court: Is there anything further, Mr. Hughes?

Mr. Handler: Just one moment, your Honor.

The Court: All right.

(Short pause.)

[fol. 1058] Mr. Hughes: No further questions.

The Court: All right, thank you very much, Mr. Solinsky.

Mr. Goldberg: Thank you, your Honor.

The Court: It is a pleasure to have you, Mr. Goldberg.

(Witness excused.)

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Burnham of Lehn & Fink.

The Court: Very well.

Mr. Greenberg: Mr. Burnham, will you please take the stand.

STANLEY W. BURNHAM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, Mr. Hughes has requested me to wait for him and that is perfectly agreeable.

Mr. Hughes: All right, I am ready. I was just getting my file out.

Mr. Greenberg: Your Honor, before I commence with the examination of Mr. Burnham, I would like to cover one matter.

[fol. 1059] Last week the Government asked the defendant to admit that the Hazel-Atlas Glass Company had re-

ceived a license from the Wheaton Glass Company to produce plastic-coated aerosol glass containers, and that this license was terminated after the acquisition by Continental Can.

The Government renews its request for such admission or will produce documents in lieu thereof.

Mr. Hughes: Your Honor, I am not prepared now to make that admission. I have indicated to your Honor that we would investigate that matter and be prepared at the appropriate time.

—We have been concerned not only during the court hours but other hours of the day in extensive day-to-day preparations which go into trying to dispose of witnesses and be prepared for the next succeeding day.

Your Honor, this is a matter that has been laid aside as something that could be dealt with at a later stage of this case. I have not overlooked it but will do so at an appropriate time.

The Court: All right.

Direct Examination.

By Mr. Greenberg:

Q. Mr. Burnham, where do you reside?

[fol. 1060] A. Little Silver, New Jersey.

Q. Are you employed by Lehn & Fink as director of purchasing?

A. I am.

Q. And have you held this position since 1951?

A. Yes.

Q. And just generally speaking what have been your duties and responsibilities?

The Court: We know what a director of purchasing does, I think, for any company.

Mr. Greenberg: Fine.

The Court: You direct purchases, don't you?

The Witness: Yes, sir.

The Court: All right.

The Witness: I have other duties, however.

The Court: All right, let us have the other duties beyond purchasing.

The Witness: I am also in charge of package engineering for the company.

Mr. Greenberg: Would you please mark these documents as Government's exhibits?

Will the record show that prior to the commencement of court today I supplied Mr. Hughes with copies of these documents?

[fol. 1061] The Court: Do you have copies for me?

Mr. Greenberg: Yes, sir, but I desire to give you the exhibits that are marked and then I have photostats for my own information.

(Marked Government's Exhibits 359, 360 and 361 for identification.)

Q. Mr. Burnham, I show you Government's exhibits which have been marked for identification and ask you to identify them for us.

A. These are price lists of several divisions of our company which are dated 1959, and these were annotated by me this morning showing the types of containers used for each of the items involved.

The Court: What are the three divisions of your company?

The Witness: Well, the three divisions that are referred to, that are referred to here, are the Dorothy Gray Division, and the Tussy Division and the——

The Court: What was that?

The Witness: Tussy, T-u-s-s-y, and the Lehn & Fink Products Division.

Mr. Greenberg: Your Honor, I offer Government's Exhibits 359, 360 and 361 into evidence for the purpose of aiding the Court.

[fol. 1062] The Court: You are not introducing them for the purpose of aiding the Court, you are introducing them as evidence of the facts here.

Mr. Greenberg: Yes, I am also introducing them as evidence of the facts.

The Court: Yes.

Mr. Greenberg: All prior offers of price lists of this type that have been offered were also offered for proof of its contents.

The Court: Yes.

Mr. Hughes: Your Honor, I merely want to call attention to the fact that there seems to be two items as to which there has been no indication of the container. There is this item of Midnight gift sets followed by a considerable number of items and then Bright Secret gift sets and Early Iris gift sets.

The Court: Let us have the witness tell us why it is that he omitted to mark those.

The Witness: The individual items listed on our price lists are commonly combined into gift packaging where there may be two or three items combined.

The Court: And they are repeated?

The Witness: They are repeated in the gift set series.
[fol. 1063] Mr. Hughes: And where there is lead marked here, that would indicate a collapsible tube?

The Witness: Yes, I think it shows that it is a tube.

The Court: All right, they will be received.

(Government's Exhibit 359 for identification received in evidence.)

Mr. Greenberg: Mr. Hughes is examining 360 and 361, your Honor.

The Court: All right.

Mr. Hughes: No objection on 360, your Honor.

The Court: All right, 360 will be received.

(Government's Exhibit 360 for identification received in evidence.)

Mr. Hughes: No objection on 361, your Honor.

The Court: All right, 361 will be received.

(Government's Exhibit 361 for identification received in evidence.)

• By Mr. Greenberg:

Q. Sir, what type of containers do you use for liquid products?

[fol. 1064] A. Glass bottles.

Q. And generally speaking, what type of containers are used for cream and paste products?

A. Glass jars.

Q. You do use some plastic containers?

A. Yes.

Q. And that has been noted in the documents?

A. Yes.

Q. Are the plastic containers which you use at the present time squeeze containers?

A. Not necessarily.

Mr. Hughes: Your Honor, I object to this entire line—

The Court: Yes, I think it is—

Mr. Greenberg: I will withdraw it.

The Court: What difference does it make? I will allow it.

The Witness: We use some plastic containers, and in some instances they are not necessarily squeezed by the user but are used because they eliminate breakage possibilities.

Q. And what products are you referring to?

A. Oh, an item such as suntan lotion?

Q. Has Hazel-Atlas been one of your principal suppliers [fol. 1065] in your experience with Lehn & Fink?

A. Yes, they have been a large supplier of opal glassware and of flint glass containers.

Q. What type of products have used the flint glass of Hazel-Atlas?

A. Lotions and astringents, light liquids of one sort or another.

Q. And what type of products have used the opal ware of Hazel-Atlas?

A. Opal jars are commonly used for skin creams or any type of lubricating cream which is semi-viscous in consistency.

Q. Sir, isn't it true that there are opal bottles which are used in the cosmetics trade?

A. Yes.

Q. What are they used for?

A. Well, they are not in very great use but normally they are used where it is not desirable to show the color of the contents and we try to disguise it.

Q. Does the Shulton Company use them?

Mr. Hughes: I object to that.

The Court: What is the name of that company?

[fol. 1066] Mr. Greenberg: Shulton Company, makers of All-Spice.

The Court: Does this witness know anything about the Shulton?

Q. Do you know anything about the Shulton Company?

A. I have read their advertisements.

Mr. Greenberg: It is pretty well known that they use—

Mr. Hughes: Your Honor, I object to that.

Mr. Greenberg: Withdrawn.

Q. Who are the manufacturers of opal jars and bottles?

A. The ones that I am acquainted with are Carr-Lowery Company, a division of Anchor Hocking, and the Wheaton Glass Company, also known as J. C. Wheaton Company, and there may be others with whom I am not acquainted. Of course, there is Hazel-Atlas Company, which should be included in that group.

The Court: Do you buy from all three of those companies?

The Witness: Yes, sir.

Q. Sir, have representatives of plastic container companies been in contact with you for the purpose of selling [fol. 1067] you?

A. With me or my staff.

Q. And your staff of course reports to you in the normal course of business?

A. Yes.

Q. Who have been the principal companies involved?

A. I think the most active have been the Plax Corporation, the Imco Corporation, and the Wheaton Plastic Company.

The Court: That is a division of Wheaton Glass Company?

The Witness: It is a separate corporation. It has the same active principals. The American Can Company and the Continental Can Company.

Q. Sir, what types of plastic containers have each of these companies offered?

A. Well—

The Court: Let me ask you something before we go to that.

I take it from what you have said, the salesmen from Continental Can have called upon you or your staff from time to time to promote the sale of plastic bottles. Are those different salesmen from the salesmen that sell you your Hazel-Atlas glass?

[fol. 1068] The Witness: Yes, there are separate sales forces, I believe, that are maintained by the various companies. It is very rare that—

The Court: Let me ask you this, if you can tell me, whether in your experience at any time any salesman for the plastic division of Continental Can have attempted to sell you plastic bottles to replace Hazel-Atlas opal glass?

The Witness: No, sir, not in my experience.

The Court: Not in your experience?

The Witness: No sir.

By Mr. Greenberg:

Q. Sir, when these plastic container salesmen contacted you they said certain things. Can you give us the substance of those conversations as they relate to their desire to promote plastic containers with your company?

A. Promote plastic containers?

Q. Yes.

Mr. Hughes: I object to this generalized form of question.

The Court: Let us put it this way: has this occurred recently or is it occurring continuously?

The Witness: It has for the last—since the war, I would say—since the plastic bottles have been manufactured.

[fol. 1069] The Court: Let me ask you a very simple question: what is the pitch?

The Witness: Unbreakability and light weight.

The Court: All right.

Q. And freight, of course, is a factor, is it not?

A. That, of course, is part of the lightweight principle.

The Court: I think, Mr. Greenberg, we will take our luncheon recess now and we will return here at a quarter past two.

(Recess to 2:15 p.m.)

[fol. 1070] AFTERNOON SESSION—2:25 pm.

STANLEY W. BURNHAM resumed.

The Court: Good-afternoon, gentlemen.

Mr. Greenberg: Good-afternoon, sir.

Direct examination continued.

By Mr. Greenberg:

Q. Sir, is it true that you are purchasing agent for Richard Hudnut from 1947 to 1950?

A. Yes.

Q. Sir, has Hazel-Atlas, in your experiences with Richard Hudnut and Lehn & Fink, always been a substantial alternative source of supply for flintware for these two companies?

A. For flintware?

Q. Flintware.

A. Well, I would say they are primarily suppliers of opalware, but also alternate suppliers of flintware, yes.

Q. Aren't they substantial alternative sources of supply for flintware as well?

A. Yes.

Q. Sir, from your experiences in the industry, what are the products for which opalware are being offered?

[fol. 1071] A. Well, traditionally—

The Court: Are being offered or are being used?

Mr. Greenberg: Being used, all right.

The Court: The two may be quite different.

A: They are being used primarily for cosmetic and deodorant creams, that type of products, as I mentioned earlier, and occasionally for liquid products, as I mentioned earlier, in which it might be desirable to create a special effect or to mask the color of the content.

Q. Now, have there been additional activities by the opalware producers to expand their market?

A. Yes. Like all people they don't sell enough; they try to sell more.

Q. Now, what other fields are they going into?

A. Well, they are offering their opal containers for shaving lotions and for vitamin pills, and they have had some success in that direction.

Q. And have they tried to better their decorating of these types of containers to do that?

A. Yes, the art of decorating has been improved greatly in the last fifteen years.

Q. Sir, has Lehn & Fink, during your experiences with [fol. 1072] it, engaged in cooperative research for plastic container companies?

A. Well, we are constantly attempting to find better packaging methods, and in the course of that we experiment with plastic materials of all types and cooperate with the manufacturers, not only of the plastic materials, but the container manufacturers who use these materials.

Q. Do you actually put the product in a container for testing?

A. Oh, yes.

Q. And does that product in a container frequently go to the plastic container manufacturers?

A. Oh, yes, that is very common.

Q. And do they conduct tests with that product?

A. If—

Q. Or what do they do?

A. Normally, if we were contemplating packaging a new item or an old item in a new type of container, we would request that their laboratories make simultaneous tests with our product in their laboratories while we are doing the same thing in ours.

Q. And has this been done, sir, during your experiences? [fol. 1073]

A. Oh, yes.

Q. On what products?

A. Well, it is done with lotions, with shampoo products, with creams, with various types of materials which we manufacture and sell.

Q. And, sir, has your company carried on cooperative research activities with the glass container suppliers?

A. Yes.

Q. Has Hazel-Atlas been one of these?

A. Yes.

Q. And what types of activities have you carried on with these manufacturers, including Hazel-Atlas?

A. Well, normally the activities in regard to glass for the improvement of decoration and for the improvement of

closures, to eliminate leakage of containers—that type of research.

Q. How about new shapes, things of that nature?

A. Well, we are—in the cosmetic business we are constantly changing shapes and styles in order to try to make our packaging and our products more attractive, and we do this in cooperation with all of the glass container manufacturers who are sources of ours.

[fol. 1074] Q. Is there anything else along the esthetic line that you have been doing, including decoration?

A. Well, not that isn't covered by the general phrase of improvement in appearance.

Q. Lightweighting, things of that sort?

A. Well, lightweighting has been a continuing program for 25 years, and it has always been the effort to improve the structure of the glass container, make it stronger and to reduce its total shipping weight.

Q. Has that actually been done with any of your products?

A. Oh, yes, it's been done with many products through the years.

Q. And what is the purpose for such lightweighting?

A. Well, as I mentioned before, primarily to use the glass in the package to give the strongest unit with the fastest manufacturing techniques, to reduce cost of the container to us and to reduce the cost of shipment, inbound and outbound.

Q. Sir, when these glass containers are lightweighted, is the strength frequently increased, strength of the container?

A. It is quite normal to be able to achieve increased [fol. 1075] strength through lighter weight.

Q. Sir, directing your attention now to the plastic coated aerosols, the polyvinyl chloride coated aerosols, I think you have testified or you have noted on this price list that certain of your products are already in plastic coated aerosols; is that correct, sir?

A. Yes, sir.

Q. Have you become familiar with some of the activities to reduce the cost of the plastic coating around the bottle?

A. I know that I have been anxious to have the manufacturers reduce that cost, and I understand that some im-

provement has been made in the manufacturing techniques along that line. However, to my own knowledge, I am not aware exactly of anything that has been done, except that I know in one instance I was shown new manufacturing methods which were faster and better than those which were in existence four, five years previously.

Q. You were in Wheaton's plant, weren't you?

A. That was in Wheaton's plant, yes.

Q. Do you recall approximately when this was, just your best estimate?

[fol. 1076] A. 1958.

Q. And you went through the plant looking at this new machinery?

A. Yes.

Q. And you say this machinery was improved over what it was in the past?

A. It had been. I had seen the plant three or four years previously and knew the methods that they had previously used.

Q. And were these methods and new methods designed to reduce the cost of the container?

A. They were designed to manufacture more containers with greater speed. I don't know whether it has been successful in reducing the cost.

Q. And when you have so-called longer continuous runs of a container, that reduced the cost, from your experiences?

Mr. Hughes: Your Honor, I object to this. He is not a container manufacturer.

The Court: Yes, I will sustain the objection.

You are not a manufacturing expert, are you, sir, or do you know of your own knowledge?

The Witness: I am a purchasing agent, sir.

The Court: Yes.

[fol. 1077] All right, I will sustain the objection.

Q. Well, in your own business, in Lehn & Fink, on your processing lines, when you have so-called longer continuous runs, doesn't that lower the cost?

A. That is normal, yes.

Q. Sir, when you take the plastic coating away from this

bottle, do you just have a conventional glass container underneath?

A. Well, there have been and are some aerosols being packaged in glass bottles without the vinyl coatings, but the size of these has been limited and the shape has been limited. The margin of safety in transportation and use has to be carefully watched by the packer, and people like ourselves are responsible for these packages in the hands of consumer, and we have to have them so designed that we have maximum safety for the consumer.

Q. I understand those are the uncoated aerosols. I was going to get to them in a moment. I had a different question in mind, and I am sorry I didn't make myself clear.

Could you describe the plastic coated aerosol container for us? It's got a plastic coating, then it's just a plain [fol. 1078] ordinary—

The Court: Now, Mr. Greenberg—

Mr. Greenberg: Withdrawn.

The Court:—haven't we had people describe that thing for us two or three times?

Mr. Greenberg: Well, your Honor, I offer to prove that the glass bottle underneath the plastic coating is just a plain old ordinary bottle, which is as cheap as any other bottle.

The Court: Well, that may be, but that isn't the purport of your question. You are asking him to describe something which, as I understand it, has been described two or three times before by other witnesses. I don't think we have to go into this again. I know what the general description of it is.

Now, if you want to go into some specific features of it, go ahead.

[fol. 1079] Q. Sir, if you were to remove the plastic coating of the aerosol, would you have a conventional glass bottle underneath?

A. We specify in our purchases that they use a special glass in many instances because we feel it will give greater safety.

Q. Sir, have uncoated glass aerosol containers been used for your products?

A. Yes.

Q. For which have they been used?

A. Well, it depends on how we want to pack them. It is a practical matter. We feel that they are only suitable for certain light liquid products other than cologne.

Q. Sir, for what products have the polyvinyl chloride on plastic aerosol containers been offered to you?

A. The imagination of the purveyors of packages knows of no bounds, and they recommend it for everything.

Q. When you were in the Wheaton offices, sir, do you remember that showroom off the lobby?

A. Yes.

Q. Do you remember all the products in the glass cases? [fol. 1080] A. No, I could hardly remember them all. I remember that there were many of them.

Q. What product area did they cover?

The Court: He said that he did not remember them specifically.

Q. Do you remember the general areas that they covered?

A. Well, as I said, their imagination knows no bounds in this direction. They sell all types of materials packaged in aerosol.

Q. When you say all types of materials, can you be specific?

A. Liquids and semi-solids which are possible for propulsion from an aerosol package.

Q. Sir, do you keep track of costs of can, glass and plastic containers?

A. Well, I don't personally, but my staff does, and we, of course, are aware of the changing costs of, packaging materials, of the types of packaging units.

Q. Is this an important factor to you in the overall selling price of your products, the cost of containers?

A. Not a very considerable factor.

[fol. 1081] Q. It is a factor?

A. It is a factor, of course.

Q. Is it an important factor, sir?

A. Relatively, yes.

Q. Sir, for low-priced items of your lines, what percentage of the cost is the selling price—in other words, what percentage of the selling price would be represented by a container?

Mr. Hughes: I am going to object to that, your Honor. I am not sure that I understand what "low-cost items" means.

Mr. Greenberg: I didn't say "low-cost," I said "low-priced."

Mr. Hughes: Well, low-priced—

The Court: Let us not have what the percentage of the selling price is, but let us have what the percentage of the cost is.

Mr. Greenberg: All right.

Q. What is the percentage of the cost—

The Court: Do you object to that, Mr. Hughes?

Mr. Hughes: Well, your Honor, my difficulty is that I do not know what the term "low-priced items" encompasses. [fol. 1082] The Court: I understood that "low-priced" was out of the question.

Mr. Hughes: Then may we have the question?

The Court: Yes, let us have the question.

(Question read.)

The Court: All right, reframe the question, Mr. Greenberg. Let us begin again.

Q. What percentage of the cost of the various products you market is represented by the cost of the container?

The Court: In general terms.

Q. In general terms, sir.

Mr. Hughes: Don't we have to determine cost first, your Honor?

The Court: We are not looking for precise figures here. We are not attempting to ascertain it with an accountant's precision, but I think you better break it up as between products packaged in glass and products packaged in plastic.

Mr. Handler: What relevance does it have in a Section 7 case?

The Court: I will take it.

Q. Directing your attention first to your products packaged in glass containers, what percentage of your costs is represented by the cost of the container?

[fol. 1083] The Court: Does it vary widely?

The Witness: It does vary very widely, because we have some extremely plain packages.

The Court: Then it does vary widely and I will sustain the objection to the question. You cannot generalize.

Mr. Greenberg: There is a range, your Honor, for certain items, low-priced items, and there is a percentage which he can estimate, and I think this witness is aware of them.

The Court: Then let us define our terms here. You have asked about low-priced items. First ask him what is meant by low-priced items.

Q. Are there areas where the cost of a container would be a greater percentage than in other areas?

A. Yes.

Q. What areas are those?

A. We offer many highly decorative packages particularly for high-priced creams and perfumes, and with such packages the cost of the packaging material may be as high as 50 per cent of the cost.

Q. Now, are there other areas where it might be less?
[Vol. 1084] A. Yes.

Q. What are those areas?

A. Well, those areas are those in which there is a very utilitarian basic package, such as the Lysol bottle, where we are primarily concerned with getting the product to the consumer as economically as possible, and this is not an item for my lady's boudoir. It is something to be kept on the back shelf, so that in such instances the container costs may go down as low as 15 to 20 per cent.

The Court: That again would vary as between glass and plastic, I suppose?

The Witness: Yes.

Q. Would you give us what those variations would be?

A. The cost, the percentage of the cost of the plastic package would, of course, vary in much the same manner, depending on how well we decorated it or what the contents were.

Q. Now, sir, there have been recent advances in decorating plastic packages, plastic containers, have there not?

A. Yes.

Q. Would you describe them for us?

[fol. 1085] A. Well, the first plastic packages were sometimes labeled and sometimes silk-screened, with one or possibly two colors, and, in fact, in recent years it has become possible to have multi-colored decoration of the containers to make them more attractive, and various shapes have been improved, so that it is possible to make many more interesting shapes.

Q. Sir, do you know from your experience the various types of fittings or closures on glass containers which are used for dispensing purposes?

A. I certainly don't know them all. I am familiar with some of them. We use closures, cap closures with a tip cap, which permits the material to be poured out of the bottle without removing the cap. We use pumps or dispensers which pump the material, hand lotion particularly, out of the bottle, and we have had many other types of closures offered to us, but we don't have any others in use at the present time.

Q. What other types of closures have been offered to you with respect to dispensing?

A. Caps with swabs attached, and caps which lock on, and caps which permit the liquid to come out by drops, and there has been great ingenuity shown in the development of different types of closures.

[fol. 1086] Mr. Greenberg: You may cross-examine.

Cross-examination.

By Mr. Hughes:

Q. Mr. Burnham, you have told us that you have a Tussy Division, is that right?

A. Yes.

Q. And you have given us the list of products that that division produces?

A. Yes.

Q. And you have a Dorothy Gray Division; is that another division?

A. Yes.

Q. And you have given us the list of products and specified the products of that division?

A. Yes.

Q. And you also have the Lehn & Fink Division?

A. That is correct.

Q. You have given us the price list or the products of that division?

A. Yes.

Q. Do you have any other divisions in your company?

A. Yes, we have one called a National Laboratory Division which is only manufacturing for the sale of chemicals for sanitation purposes disinfectants and detergents and floor wax. Most of this business is done in bulk containers, [fol. 1087] in one gallon up to—well, we have one one-quart package and then the rest of them are up to 50-gallon capacity containers.

Q. What kind of containers are those?

A. Glass and tincans and steel drums.

Q. Do you have another division known as the professional division?

A. We have a professional division which sells disinfectants to hospitals, primarily to hospitals, and those products are sold in one-gallon and larger metal containers.

Q. When you say metal containers, you are referring to what kind of metal?

A. Well, some of the smaller one-gallon packages are in tincans, and the five-gallon and larger packages are in steel drums.

Q. Mr. Burnham, approximately what percentage on your total dollar purchases on containers have been your purchases of plastic containers?

A. Not above 3 per cent.

Q. What is the percentage of the sales of your company in plastic containers as against your total sales?

[fol. 1088] A. We are speaking now of dollar volume?

Q. Yes.

A. Between 5 and 7 per cent.

Q. Now you have alluded to the fact on your direct examination that there are some special characteristics of plastic. Would you say that plastic in the cosmetics industry was primarily for specialized uses and designed to meet the special needs of your customers?

A. Well, our uses in our company of plastic packaging has been in such instances where we were able to develop a package or a container which was more convenient for the consumer and which, in the instance of shampoos, for ex-

ample, may have made a person feel safer with the package when they had it in the shower or in the bathtub.

Q. And did you give us the illustration of suntan oil as another instance?

A. Suntan oil is another such instance where it would be carried to the beach and you would have the possibility of breakage.

Q. Are there any drawbacks to the use of plastic containers?

A. The difficulties are inherent in the permeability of the [fol. 1089] plastic itself, of the polyethylene or polystyrene material that is used, because it does not have the impermeability of glass, and the other difficulty is that it is not as transparent, and also that we have found that on long-shelf storage that they have a tendency to collect dirt and dust more than glass and it is more difficult to remove it.

Q. Now, in connection with the marketing of your products, do you conduct market tests of any kind? Do you do any market testing?

A. Yes, that is customary in our industry. Whenever we market a new product and if we want to make any radical change in the packaging, we normally first would submit it to a panel of possible buyers, of women who are users, and then subject it to a marketing test in a selected group of cities to determine whether the product and the package are acceptable.

Q. You have referred to the fact that you conduct these programs in cooperation, for example, with glass container manufacturers, using their products or their containers for your products. Do you recall that reference?

A. Yes.

[fol. 1090] Q. Many of those programs have to do simply with a change in the design of the particular container itself, isn't that right?

A. Well, that is quite possible, yes.

Q. In other words, a glass container company will try to interest you in the idea of a different shape of a glass container than you are presently using as an inducement for a sale, is that correct?

A. Yes, that is correct.

Q. And would you say that that kind of change consti-

tutes by far the greater number of changes that you make in packaging materials for your products?

A. Yes. We are constantly restyling our merchandise in order to keep abreast of competitive situations and we try to make it more appealing to the consumer.

Q. Now is it also true that you carry on these cooperative programs with persons making packaging materials other than plastic and glass and can containers?

A. Yes, we work with paper manufacturers or paperbox people, with the brass goods industry who make lipstick and rouge cases and compacts, and molding companies, plastic molding companies of all sorts.

[fol. 1091] Q. In the cosmetics field, about how many items do you market?

A. I don't know the exact tally.

Q. Approximately?

A. It must be seven or eight hundred.

Q. And isn't the great bulk of these in relatively small items?

A. You are speaking of small in size?

Q. Yes, small in size.

A. Yes.

Q. And small in quantity, too?

A. Well, unfortunately—

The Court: You mean small in quantity within the bottle?

Mr. Hughes: No, small in relation to the total volume.

Mr. Greenberg: What category are we talking about now? We have three or four items now.

The Court: Reframe the question, Mr. Hughes.

Q. In the cosmetics field, would you say that approximately 25 products of those six or seven hundred that you specified constitutes let us say 65 to 75 per cent of your total cosmetics production?

[fol. 1092] A. Yes.

Q. Now on this price list you have already indicated that you had a roll-on deodorant and you also indicated that you had a spray deodorant, is that right?

A. Yes.

Q. Is the formulation for the roll-on deodorant different from the formulation of the spray deodorant?

A. Yes.

Q. Your price list also indicates that you market some of your products in aerosols, is that correct?

A. Yes.

Q. Atom Mist would be one of those products?

A. Yes.

Q. Is Atom Mist marketed in both glass aerosols and tin aerosols?

A. We marketed in both glass and metal aerosol packages experimentally during 1958 and 1959. We are discontinuing the metal because we found that it was not—well, it was not well accepted.

Q. What is the trouble with tin aerosol; what did you find out about the reaction of the consumer?

A. Well, apparently it was that matter of cosmetic elegance that I earlier mentioned, that somehow did not sell. Glass aerosol was preferred, and apparently it was preferred [fol. 1093] for its appearance. Each of them was convenient for use but it was just a question of a woman's personal preference.

Q. A woman tends to associate tin aerosol with insecticides and things of that sort?

A. That I think is probably true, that they have bought a fly dead and that sort of thing in that type of can and they don't like it for cosmetics.

Q. Would it be correct to say that the only really successful tin aerosol is in the hair-spray market?

A. In my experience the hair-spray market has been the only one where the tin can aerosol has been very successful.

Q. How many companies would you say are in the toiletries and cosmetics business?

A. I wouldn't do any more than hazard a guess, but there are over a thousand.

Q. And about how many thousands of products would you say are made by the toiletries and cosmetics industry?

A. I have no real knowledge but it must be in the hundreds of thousands.

Q. Now is it also true that you frequently use a more [fol. 1094] expensive container to market a product than a container that you might otherwise use?

A. Yes, in appealing or in presenting a product for use by a woman, for an improvement of her facial well-being or her beauty, she likes to have it presented to her in a

beautiful package, and so we do our very best to come out with various types of packages.

Q. You try to market for that purpose a product of superior elegance, if I may use that term?

A. Yes.

Q. And for such a product you use a container of superior attractiveness?

A. Yes.

Q. Even though it is more costly?

A. Yes.

Q. Can you tell me about how long it takes from the time when you want to make a change, for example, in the form or the contour of a bottle to the time that you actually put that change into effect?

A. It largely depends on whether it is a product of small or large volume. If it is a product of small volume, we would be able to make such a change in eight or nine months, but if it involves a major product like Lysol, where there is a great deal of packaging equipment involved, in [fol. 1095] such an instance it would take a year and a half or two years.

Q. Mr. Burnham, isn't it true that Continental Can does not now sell plastic containers for packing products now packed in opal jars?

A. If they do I am not aware, but then they are not very active sales people in that area.

Q. On some of your plastic containers the squeeze feature is an important feature, is it not?

A. Yes.

Q. When you want to spray your product the squeeze feature is an important factor, is that correct?

A. Yes.

Mr. Greenberg: Your Honor, I find that I have left a book that I wanted to use back in my office, and when Mr. Hughes terminates with cross-examination I would like to have just one minute to go and get it and bring it back here.

The Court: Very well.

By Mr. Hughes:

Q. When you said that Continental Can was not active in this area, were you referring to the plastic industry generally?

A. I am just referring to the impact on me as a buyer.
[fol. 1096] Q. You do not see their salesmen as frequently as you see a Plax salesman, is that right?

A. My reaction would be that they are rather inept in that field in terms of selling.

Q. When you were giving his Honor some of these estimates of costs, were you including the cost of advertising in your estimate of costs?

A. No.

Q. And in your testimony you were not suggesting at any time, were you, that plastic containers do not cost more than glass containers?

A. Well, I buy some plastic containers that cost less than other glass containers, of course, because it depends a great deal on the decoration and the quantity bought, the conditions of purchase and so on.

Q. Generally speaking and taking a comparable size and a comparable container with comparable decorating effects, isn't it a fact that the plastic container is a more expensive container generally than the glass container?

A. Yes, the basic plastic container is more expensive.

Q. In determining the costs, would you tell his Honor what items you took into account in attempting to arrive [fol. 1096a] at cost?

A. Well, in making the two product estimates that I did, I included cost of the basic jar or bottle, the cost of the decorations on it, whether it be a label or a silk screen, the cost of the box or carton in which are contained each of these products, the shipping container, plus the labor cost involved, plus the overhead on the labor involved.

[fol. 1097] Q. Would you say those were all the elements you took into account?

A. Those were the essential elements.

Mr. Hughes: That is all.

Mr. Greenberg: I would like just one moment, your Honor, to get the book I requested.

The Court: All right, go get it.

Mr. Greenberg: It is in the next room.

Redirect examination.

By Mr. Greenberg:

Q. Sir, do you know Mr. John Heinan, H-e-i-n-a-n, of Continental Can?

A. No.

Q. Sir, are you familiar with the Chemical Specialties Manufacturers Association?

A. Yes.

Q. And that is an association of aerosol container manufacturers and fillers; is that correct, sir?

A. Well, not only aerosol container manufacturers and fillers.

Q. Who else?

A. But packers like ourselves, manufacturers of ingredients that go into these packages.

Q. And, sir, isn't it true that they attempt to survey the [fol. 1098] aerosol field to determine what products are being packed in tin aerosols?

A. I have seen reports issued by the group, indicating what they thought to be the sales of various items in various types of aerosols, yes.

Q. Sir, at the present time, from your experience in the industry, isn't it true that there are suntan preparations in aerosol tin cans?

A. Yes. We offer them.

Q. You offer them?

A. Yes.

Q. And isn't it true that there are shampoos in aerosol tin containers?

Mr. Hughes: Your Honor, is this going into industry now or his own product?

The Court: Are you talking about his company or in general?

Mr. Greenberg: Talking about in general.

Mr. Hughes: I object to it.

The Court: If you know, and if you know of your own knowledge, you can tell us. If you don't, say so.

A. I have seen them advertised.

Q. And, sir, isn't it true that there are personal de-
[fol. 1099] odorants in aerosol tin cans?

Mr. Hughes: Same objection.

The Court: Overruled. If the witness knows.

A. I have already stated that we market and have marketed such a product.

Q. Hand lotions, would the same be true?

A. Not to my knowledge.

Q. Sir, there are other products as well, sir, in your field, other than the ones—

Mr. Hughes: I object.

The Court: No, no, not other products as well as, Mr. Greenberg.

Q. Sir, you recall your statement about the insecticide feeling on the part of some women when it comes to an aerosol can?

Sir, from your experiences in the packaging field generally, isn't it true that Continental Can presently sells an aerosol can for Tropicana orange drink, which is now marketed?

Mr. Hughes: I object to it.

A. I have no knowledge.

Mr. Greenberg: You may cross-examine.

Mr. Hughes: I have no further questions.

[fol. 1100] The Court: All right, you may step down, Mr. Burnham.

Thank you.

The Witness: Thank you.

(Witness excused.)

The Court: Now, I suppose we might as well take a brief recess before we put on a new witness, unless he is very short?

Mr. McManus: Sir, I think it would be good to take a recess now. We have three short witnesses, which I think will take up the rest of the afternoon.

(Short recess.)

The Court: All right, gentlemen.

Mr. McManus: Mr. Free, please.

WILLIAM A. FREE, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Free?

A. By the Hungerford Packing Company.

Q. Where is that located?

A. Hungerford, Pennsylvania.

Q. What is your position with that company?

[fol. 1101] A. Plant manager.

Q. Is that a family-held corporation?

A. Yes, it is.

Q. And are you a member of the family that holds most of the stock?

A. Yes, I am.

Q. And you have been associated with the company, did you grow up with the company?

A. Yes.

Q. Now, what products does your company pack?

A. We pack string beans, boiled onions, kidney beans, dried lima beans and dried evaporated corn.

Mr. Hughes: Would you repeat that? Would you mind repeating that?

The Witness: String beans, boiled onions, kidney beans, dried lima beans and dried evaporated corn.

Q. And do you pack all of those products in metal cans?

A. Yes, we do.

Q. Now, are any of those products that you pack in glass containers?

A. The boiled onions and string beans.

Q. And for how long a period of time have you been packing your onions in glass containers?

[fol. 1102] A. Four years.

Q. And for how long a period of time have you been packing your string beans in—

A. Two years.

Q. Now, you also package these two products in metal containers?

A. Yes, we do.

Q. Do you mind stating what percentage of your onions are packed in glass?

A. 10 per cent.

Q. And the other 90 per cent in metal?

A. Yes.

The Court: What percentage of string beans?

The Witness: Less than a quarter of 1 per cent. It is an experimental pack right now.

Q. You just started packing your string beans in glass?

A. Yes.

Q. Could you tell me why did you decide to package your onions in glass containers? What made you go into that form of container?

A. We had to do it because competition had already been packing in glass and we had to maintain our markets by [fol. 1103] going in the glass business.

Q. Now, when you decided that you would go into the glass business, how did you go about it? What steps did you take?

A. Well, because we didn't realize how large or small it was going to be, we made—we had a makeshift production line, that was just about entirely a hand and slow-speed operation.

Q. Now did you have to—you had to obtain glass equipment; is that right?

A. Yes.

Q. And did you have to go to a supplier of the machinery for that?

A. Yes, we did.

Q. And whom did you go to?

A. We went to the White Cap Company.

Q. And did they assist you in setting up your glass line?

A. Yes, they did.

Q. And you lease this equipment from White Cap?

A. Yes, we do.

Q. You had no initial expenditure for the glass, for the capping machinery?

A. No.

[fol. 1104]. Q. And did you have to buy some additional equipment?

A. Yes, we did.

Q. And what would that be, principal equipment?

A. We had to have some retorts to put the product in.

Q. And of what type were they, the automatic type?

A. No, they were semi-automatic.

Q. Could you estimate approximately what it cost you to change over the line to—

A. It cost us about \$2,000.

The Court: That is, to the extent that you did change over, that is, for the 10 per cent in the onion business?

The Witness: Yes, sir.

Q. And do you use the same line also for string beans?

A. Yes, we do.

The Court: When you say costing \$2,000 to change over, Mr. Free, that doesn't mean by any manner of means you change your whole production over from cans to glass, does it?

The Witness: No, it doesn't.

[fol. 1105] Q. What percentage of your total output would you say now is in glass as distinguished from cans?

The Court: In all products?

A. Not more than 3 per cent.

Q. 3?

The Court: 3 per cent of all your products?

The Witness: Yes.

Q. Prior to 1955 none of your products was in glass though, is that correct?

A. That's right.

Q. Now, you lease the White Cap equipment; do you also use their caps?

A. Yes, we do.

Q. And is that equipment a steam vacuum type? Is that a steam vacuum cap?

A. Yes, it is.

Q. And the vacuum type closure you use for that type of equipment, also?

A. Yes.

Q. Now, could you tell me your principal suppliers for your metal cans?

A. Continental Can and American Can.

Mr. McManus: That is all.

Mr. Hughes: May I have just a moment, your Honor?

[fol. 1106] Cross-examination.

By Mr. Hughes:

Q. Mr. Free, you say that you lease the equipment from White Cap; is that correct?

A. Yes.

Q. What equipment do you lease from White Cap?

A. We lease the capper and another piece of equipment called a head-spacer.

Q. And do you say you buy your closures from White Cap?

A. Yes, we do.

Q. White Cap doesn't require you, does it, to buy your closures from them?

A. No, we have used other equipment or closures on that machinery.

Q. What other closures do you use?

A. We have used some from Owens-Illinois.

Q. Anybody else?

A. No, they are the only ones.

Q. Now, how many other lines do you have besides the line which you described to his Honor as the makeshift line for putting up the onions?

A. Two other lines.

Q. And are these can lines?

[fol. 1107] A. Yes, they are.

Q. And do you ever use the can lines for packing any of the onions?

A. Yes, we do.

Q. These two lines to which I have referred?

A. We use one of the two lines that you refer to for onions.

The Court: Do you mean for packing onions in cans or for packing onions in bottles?

Mr. Hughes: That is what I was just coming to.

Q. For packing onions in cans; is that correct?

A. Yes.

Q. In other words, you use those two can lines only for packing products in cans; is that correct?

A. That is correct.

Q. You do not use the two can lines for packing any product in glass; is that correct?

A. That is correct.

Q. And isn't it a fact that it wouldn't be feasible for you to use those lines for packaging products in glass containers?

A. No, it wouldn't.

Q. From whom do you buy your glass containers?

[fol. 1108] A. Owens-Illinois.

Q. Do you have any other source of supply?

A. No, that is the only one.

Q. Do I understand that this pack of string beans in cans is an experimental pack?

A. In glass?

Q. In glass, yes.

A. Yes, it is.

Q. And can you tell me about how many cases of that experimental pack you put up?

A. Last year we put up around 5000 cases.

Q. Has it all been sold, do you know?

A. No.

Q. It has not all been sold?

A. No.

The Court: Have you tried to sell it?

The Witness: Yes, sir.

The Court: And you find some difficulty in moving it, I take it?

The Witness: Yes, sir.

Mr. Hughes: That is all.

Mr. McManus: I have one question.

Redirect examination.

By Mr. McManus:

Q. Now, when we are talking about can lines and glass [fol. 1109] lines, Mr. Free, the initial preparation of, say, your string beans would be the same up to the filler, whether it was going to go into a can or to a glass?

A. Yes, it would.

Q. So that you would be running up to the filler, you would be doing the same identical thing with string beans, up until you started to put it in either the can or the glass; is that correct?

A. Yes, it is.

Q. And indiscriminately, either the string beans would go down one filler for the cans or down the other for the glass; is that correct?

Mr. Hughes: Now, are we referring now to what he described as this makeshift line? Is that what you are referring to?

Mr. McManus: I am talking about his can line, in which he testified that the preparation of the product is identical up until the filler.

Mr. Hughes: Well, then I object to that. Unless he is prepared to describe what the complete canning operation is on the can line, it seems to me that the question is meaningless.

The Court: No, I will overrule the objection. [fol. 1110] Do you understand the question?

The Witness: Yes, I do.

A. The two are exactly the same up to the filler.

Mr. McManus: That is all I have.

Recross-examination.

By Mr. Hughes:

Q. Then what happens after that on the can line?

A. Well, from the filler, the filler at that point, then the filler has to be adapted to either a glass operation or a can operation.

Q. And you are now talking about the—are you now talking about this makeshift can line?

A. Yes.

Q. The Court: Makeshift glass line.

Q. Makeshift glass line?

A. Yes.

Q. And you are not talking about regular can lines for putting products in tin cans; is that correct?

A. I am under the impression that he was talking about the two lines, the tin line and the makeshift glass line that we have.

[fol. 1111] Q. Well, what you are saying, isn't it, what we are describing as the makeshift line you use sometimes to pack in glass and sometimes to pack in tin; is that correct?

A. Right.

Q. And it was that line that you were referring to in describing these operations to his Honor; is that correct?

A. Yes.

Q. You were not alluding in any respect to the two other can lines; is that correct?

A. Well, I think we are talking about two different things.

The Court: Let me ask a question now.

By the Court:

Q. You take the beans and you cook them; is that right, somehow?

A. Yes.

Q. And then when they are cooked you put them either in a glass thing or a tin can; is that right?

A. That's right.

Q. Now once the beans are cooked, taking that same mess of beans, you could take a ladle and put one mess of them in a glass jar and seal that and sell it, or you could take the [fol. 1112] next ladle and put it in a can and sell that; isn't that right, or isn't it?

A. The only thing I have—

Q. In other words, the same old bean?

A. It's the same old bean, but they are pre-cooked first.

Q. Yes.

A. And they are pre-cooked and then they are filled,

and then the major difference between glass and tin takes place at that point.

Q. After that?

A. After that, with their final cook.

Q. Oh, there is another cook. That is what we are getting at.

A. There is the final cook.

Q. There is another cook. Now, is the cook that is necessary for glass any different from the cook that is necessary for tin, that is, the second cook?

A. It is very much different.

Q. It is, all right. Now tell us the differences between them?

A. Well, the difference is that we cook these containers in large retorts. We only have so many of them. The glass operation takes twice as long as the tin.

[fol. 1113] Q. You have got to cook it twice as long?

A. We have to keep it in that retort twice as long, because you have to cook it and cool it in the retort, whereas with the tin, you just cook it in the retort and cool it in a canal. So it takes twice as long in that operation.

Q. And that is because of the different heat or cooling qualities in glass, on the one hand, and tin on the other; is that right, largely?

A. Well, it is because glass would break if we subjected it to the same treatment as we subjected the tin to.

The Court: Now, Mr. Hughes, that clarifies it for me.

Mr. Hughes: I think it does, yes.

The Court: All right, is there anything further?

Redirect examination.

By Mr. McManus:

Q. Are you familiar with the high temperature short time processing method?

A. No, I am not.

Mr. McManus: That is all, your Honor.

The Court: All right.

[fol. 1114] Mr. Hughes: No further questions.

The Court: Thank you, Mr. Free.

(Witness excused.)

Mr. McManus: The gentleman from the Sommers Company.

HARRY J. MARTIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Martin, by whom are you employed?

A. Charles G. Sommers, Jr., Incorporated, New Freedom, Pennsylvania.

The Court: Now, Mr. Martin, you try and keep your voice up so that these gentlemen in the corner over there can hear you, will you?

The Witness: All-right, sir.

Q. And your company is engaged in the packaging of vegetables, canning of vegetables?

A. That is correct.

Q. Does your company also operate a glass line?

A. Yes.

Q. And when did this glass line first go into operation?

[fol. 1115] **A.** Approximately five years ago.

Q. And for what product?

A. Boiled onions only.

The Court: Tell me this: What is there peculiar about boiled onions that you get in the glass?

The Witness: Eye appeal.

The Court: Eye appeal.

The Witness: Eye appeal.

The Court: All right.

Q. And you pack these in normal consumer sizes; is that correct, 303 size?

A. The glass?

Q. In glass, yes.

A. Only in one size, the 16-ounce vegetable glass.

Q. I see. And that is normally sold in retail stores?

A. Consumer size.

Q. What percentage of your onion pack is in glass containers?

A. About 19 per cent. That is the basis of a 303. That is the way it is all done.

Q. That is on a unit basis?

[fol. 1116] A. That is correct.

Q. Now, why did your company decide to go into packaging of this product for glass, put the product in glass?

A. Well, we had through our brokers, we had consumer requests, and also the other canning plants going into it.

The Court: Who went into it first, do you know?

The Witness: I don't know, sir.

The Court: You don't know who started the boiled onion in glass movement?

The Witness: No, sir.

Q. When you said you packed 19 per cent, you packed the remainder of your pack in——

A. Tin.

Q. —in tin?

A. Yes.

Q. When you decided that you would go into this business, did you approach suppliers of the equipment to put in a glass line?

A. Yes, we did.

Q. And whom did you approach?

A. One was Anchor Hocking. Incidentally, that is the [fol. 1117] material or the company that we buy the glass from.

Q. And you buy, and you got what type of equipment from them?

A. Well, we have Anchor's closing machinery and also their head-spacer.

Q. And that would be the closing—do you buy their caps, also?

A. Yes, we do.

Q. So you buy the Anchor machine, the caps and the glass?

A. All in the one company.

Q. And glass comes to you in corrugated shipping containers?

A. That is correct.

Q. So in effect you buy the closing machinery, the caps, the glass and the shipping container all from one company?

Mr. Hughes: Now wait a minute.

The Court: No, no. Sustained.

Q. The glass comes to you in corrugated shipping containers?

A. That is correct.

Q. And they assisted you in changing this line over? [fol. 1118] A. Yes, they did.

Q. And in your case, what was the approximate cost?

A. I don't have the definite cost here with me, but it was in the neighborhood of between three and five thousand. I wouldn't like to give you a definite amount because I am not sure.

Q. And from what company or companies do you purchase your metal containers?

A. From Continental Can Company and also National Can Company.

Q. They are your principal suppliers?

A. That is correct.

Q. And could you estimate approximately what percentage of your total pack in units is represented by glass.

A. Approximately 4 per cent.

Mr. McManus: Thank you very much. That is all.

The Court: Mr. Hughes.

Mr. Hughes: Yes.

Cross-examination,

By Mr. Hughes:

Q. Mr. Martin, does your company pack dried lima [fol. 1119] beans?

A. Yes, sir.

Q. In what kind of a container?

A. All in tin.

Q. Green lima beans?

A. That is correct.

Q. What kind of a container?

A. In tin.

Q. All in tin?

A. That is correct. The only item we packed in glass is the boiled onions, other than tin.

Q. Well, then will you tell me whether you pack the following items: —

A. Yes, sir.

Q. Kidney beans and other dry pack beans?

A. Yes.

Q. Peas?

A. Yes, sir.

Q. Green stringless beans?

A. Yes, sir.

Q. Wax beans?

A. Yes, sir.

Q. Tomatoes, both whole and peeled?

A. Yes.

[fol. 1120] Q. Corn?

A. Yes.

Q. Carrots?

A. Yes, sir.

Q. Peas and carrots?

A. That is correct.

Q. Mixed vegetables?

A. Correct.

Q. Succotash?

A. Yes.

Q. Triple succotash?

A. Yes, correct.

Q. Okra?

A. Yes.

By the Court:

Q. What is this, what is the difference between succotash and triple succotash?

A. Triple succotash —

Mr. Hughes: I have had a double Martini, your Honor, but not a triple succotash.

The Witness: Triple succotash consists of corn, lima beans and tomatoes.

The Court: Tomatoes are the tripling factor.

The Witness: That's right.

[fol. 1121] The Court: All right.

Q. Okra?

A. Yes, sir.

Q. Tomatoes in corn, that is, the combination tomatoes and corn?

A. Yes, correct.

Q. Okra and corn?

A. Correct.

Q. And all of those are exclusively in metal containers?

A. That is correct.

Q. Tincans?

A. Right.

Mr. McManus: Just one question.

Mr. Hughes: Just a minute.

The Court: Wait a minute.

Mr. McManus: I am sorry. I thought he was finished. I am sorry.

Q. How many other packing lines do you have besides this line that you use for packing the onions in glass?

A. Three.

Q. And are they can packing lines?

A. Yes, they are.

[fol. 1122] Q. And are they modern packing lines?

A. Yes.

Q. Relatively new and modern; is that correct?

A. That is correct.

Q. And is the method of packing on these lines different from the method of packing on the line on which you pack the onions in glass?

A. Yes, it is.

Q. And is it different from start to finish?

A. Well, actually the lines themselves are not from start to finish. Up to a certain point they are practically the same. But on can lines they are highspeed lines. On glass, it is very slow, it is a very slow line.

Q. Are there any actual differences up to the point of the filler between your modern lines and this makeshift line?

A. No.

Mr. McManus: I object to the word "makeshift." He has never said it was a makeshift line.

Mr. Hughes: I withdraw it, your Honor.

Q. Are there any differences in the methods by which

the product comes from the warehouse to the line, in the case of the glass line and the case of these three canning [fol. 1123] lines?

A. Do you mean the container?

Q. No, not the container, but the method of getting the container there and getting it through those preliminary steps to the filler?

A. Well, now, cans are—we have can lines running direct from a freight car to the filler, where on glass it has to be conveyed from a warehouse by hand and fed on to the glass line.

Q. And then it reaches the filler; is that correct?

A. That is correct.

Q. And what are the steps from the filler, in the case of the can lines?

A. In the case of the cans?

Q. Yes.

A. They go from the filler to the capper, from the capper they are conveyed to the automatic cooker. We have what is called a continuous cooker, and all 303 cans in, that is tin, go through the continuous cooker.

Q. May I interrupt you there to have you explain to his Honor the difference between a continuous cooker and a retort?

[fol. 1124] A. Well, a retort, mainly, you drop the canned vegetables in by way of a crane, or whatever way you have of getting them in the retort, seal the retort and cook them right there.

The Court: I see.

A. (Continuing) In an automatic cooker, the cans never stop; they travel on tracks inside of this cooker for a certain length of time, whatever is specified.

The Court: Then they come out of the cooker and they are cooked.

The Witness: They come out cooked, correct, and from there they travel on cooling tracks above the cooker, and eventually go to the labelling machine, where they are labeled and then shipped.

Q. Do you have any continuous cooker on the glass line?

A. No, indeed. They are cooked in retorts.

Q. You don't cook—

The Court: After you cook them in retorts on the glass line, then you have got to have a special cooling process?

The Witness: That is correct.

Q. And then what happens from that point on, on the [fol. 1125] can line, from the point that it gets out of the continuous cooker? Is it all fully automatic from that point on?

A. Yes, it is. It travels on a track until it eventually reaches a label machine, where it is labelled and then cased, and then of course put in the shipping department or immediately on a truck.

Q. How about on the glass line? Is it or is it not fully automatic after it leaves the retort?

A. It is not. They are put in the cartons by hand. It is a hand operation.

The Court: Any further questions?

Mr. Hughes: That is all, your Honor.

Mr. McManus: I have just a few questions.

Redirect examination.

By Mr. McManus:

Q. Now, despite all these problems and despite all these products, you have gone from zero in 1955 to 4 per cent of your business in glass; is that correct?

A. Yes.

Mr. Hughes: Object to the form of the question.

The Court: All right, the form of the question is not precisely ideal for someone who is examining in chief, let's put it that way. I will permit it, having been answered, but [fol. 1126] try not to ask questions like that.

Mr. McManus: All right, sir.

Q. Is your glass line new and modern?

A. No, it is not.

Q. Your glass capping equipment is new, though?

A. It is.

Q. Are you familiar with glass capping equipment generally? Do you keep yourself advised?

A. No, I am not.

Q. Are you familiar with any of Anchor's other machinery?

A. No, I am not.

Mr. McManus: That is all.

The Court: All right, thank you, Mr. Martin.

Mr. Hughes: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Next witness.

Mr. McManus: Mr. Brown, please.

[fol. 1127] JOHN C. BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Now, Mr. Brown, by whom are you employed?

A. The C. H. Musselman & Company.

Q. What is your position with that company?

A. Assistant purchasing agent.

Q. For what period of time have you been employed by them in this capacity?

A. Approximately 12 years.

Q. Could you tell me the products that your company packs?

A. Sliced apples, applesauce, apple juice.

Mr. Hughes: Would you mind going a little slowly? We are trying to take notes. Sliced apples.

A. (Continuing) Sliced apples, applesauce, apple juice, apple butter, apple-base jellies, tomato juice, tomato puree, sour cherries, spiced apple rings, pie fillings, and vinegar.

Q. Could you tell me in what type of containers—

The Court: Where is your plant?

The Witness: Sir, we have three of them. One is at [fol. 1128] Bingerville, where our home office is. Another

is in Wood, West Virginia, and the third at Gardners, Pennsylvania, located just north of Bingerville.

Q. Could you tell me in what type of container you package your applesauce?

A. Our applesauce is packed in both glass and tin.

Q. And your special apple rings?

A. Spiced apple rings.

Q. Spiced?

A. Are packed in both glass and tin.

Q. And your apple-base jellies?

A. Packed in both glass and tin.

Q. How about your apple butter?

A. Both glass and tin.

Q. And your apple juice?

A. Both glass and tin.

Q. And your pie fillings?

A. Both glass and tin.

Q. You have a number of different type pie fillings, I assume?

A. Yes, sir; we have four of them.

[fol. 1129] Q. Four different types.

A. Yes, sir.

Q. Are you familiar with any of the other companies in your area which package pie fillings?

A. I know of one of our competitors, yes, sir.

Q. Who is that?

A. Knouse Foods.

Q. How do they package their pie fillings, what type of container?

Mr. Hughes: Your Honor, I object to that.

The Court: If this man doesn't know, Mr. Hughes, what the competitors in his own areas pack their pie fillings in when they are competing in pie fillings, I don't know who could know it.

[fol. 1130] Mr. Hughes: We have a deposition on this subject.

Mr. McManus: It is not before us, you Honor. I mean, he knows.

The Court: All right, let's have it. I will overrule the objection.

A. I have seen their package in tin on a shelf. I don't know if they pack in glass or not.

Q. Now, are these products which are packaged in glass, your products, do you use what is known as a—

Mr. McManus: I will withdraw that.

Q. The products that we have gone over, which you package both in glass and cans, are they packaged under a vacuum cap, a steam vacuum cap?

A. Are you referring about the ones in glass?

Q. Yes.

A. All of the closures which we use on our glass packages are steam closures.

Q. I see. And your company has the equipment to put these closures on to the glass container?

A. You mean is the equipment in our plant?

Q. You do have that type of equipment?

A. Yes, sir.

[fol. 1131] Q. And what company or companies furnish you that equipment?

A. We have both White Cap Company closures and Anchor Hocking.

Q. And that would be the closing machinery and the closure, also?

A. We have referred to it as a capping machine.

Q. A capping machine?

A. Yes, sir.

Q. And you also buy caps from those two companies?

A. Yes, sir.

Q. Now, do you buy any non-vacuum caps?

A. We buy a twist cap for one of our vinegar package, which is not applied as a vacuum cap.

Q. And from what company do you purchase that?

A. Crown Cork & Seal.

Q. And who are your, today, your principal can suppliers?

A. American Can Company and Continental Can Company.

Q. And who are your principal glass suppliers?

A. Owens-Illinois Glass Company, Armstrong Cork Company, Anchor Hocking Glass Corporation, Hazel-Atlas Glass Company, Tygart Valley Glass Company and Metro [fol. 1132] Glass Company.

Mr. McManus: That is all, your Honor.

Mr. Hughes.

Cross examination.

By Mr. Hughes:

Q. Can you tell me what type of container you package your sliced apples in?

A. Sliced apples are in cans only.

Q. And your tomato juice?

A. Tomato juice is in cans only.

Q. And your tomato puree?

A. In cans only.

Q. And your vinegar?

A. In glass only.

Q. And your sour cherries?

A. In cans only.

And vinegar, we also pack barrel vinegar, which is sold in wooden barrels.

Q. And what is the approximate gallonage of a wooden barrel?

A. 52 to 55 gallons.

Q. Are you able to tell us any of the percentages of glass and cans in those products that move both in glass and cans? Are you in a position to give us any of those figures?

[fol. 1133] A. No, sir; I could not.

Q. You can't help us on that at all?

A. No, sir.

Q. Now, of those products that are packed in both glass containers and metal containers, are some of those packed in institutional sizes, so-called?

A. Yes, sir.

Q. And for the institutional sizes, what type of container do you use?

A. A No. 10 can.

Q. And that would be true of all the products that you have specified?

A. No, no, I have to make an addition there.

In the case of apple butter, that is packed in two institu-

tional sizes, both cans and glass, both No. 10 can, and what we refer to as No. 10 glass.

Q. With that exception, all of the other products that move in both containers, the containers are packed in the institutional size in cans alone; is that correct?

A. Yes, sir.

The Court: All right, you may step down, sir.

Thank you very much.

[fols. 1134-1137] The Witness: Thank you.

(Witness excused.)

[fol. 1138] New York, June 23, 1960; 10.30 o'clock a.m.

Trial resumed

The Court: All right, Mr. McManus.

Mr. McManus: Will Mr. Fisher take the stand, please.

JOHN W. FISHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Fisher?

A. Ball Brothers Company, Incorporated.

Q. And what is your position with that company?

A. Vice-president for sales.

Q. And for how long a period have you held that job?

A. Eight years.

Q. Were you associated with the company prior to this time?

A. Yes, sir.

Q. In what capacity?

[fol. 1139] A. First in the production department, and in later capacity vice-president for manufacturing.

Q. And all told, how long have you been with Ball Brothers?

A. 18 years.

Q. Where is the headquarters of Ball Brothers?

A. Muncey, Indiana.

Q. What products are manufactured by your company?

A. What products?

Q. Yes.

A. Glass containers, screw caps, metal closures, zinc products, rolled products; generally some fabricated zinc products; plastic products; rubber products and corrugated shipping containers; and we do some space research.

Q. Now, you say "zinc products"; what class would they be?

A. We make zinc fruit jar caps; we make battery cans for dry cell batteries; lithographer sheets, plates, engravers' plates; weatherstripping; terrazzo floor strips, and a few fabricated items of that character.

Q. Now, in your rubber products, what are they? Are they containers at all?

[fol. 1140] A. Well, we make jar rings for the old mason jar. Then we run into mechanical rubber goods, many shapes and forms for home appliances.

Q. Not associated with the container industry; is that correct?

A. That is correct.

Q. And you say you are in plastics, also?

A. Yes, sir.

Q. And is that plastic containers or is it—

A. Our principal products are decorated plastic items like horn buttons; decorative emblems for appliances, automotive products and vacuum-formed items.

Q. And they are not associated with glass containers?

A. They are not.

Q. Now, where are your glass container plants, the glass container plants located?

A. Muncie, Indiana; Asheville, North Carolina; Okmulgee, Oklahoma; El Monte, California; Hillisboro, Illinois.

Q. And you indicated you were also manufacturing screw-type caps?

A. That is correct.

Q. And where are your plants located for that operation?

[fol. 1141] A. Muncie, Indiana; Chicago, Illinois, and El Monte, California.

Q. And then you indicated that you also make corrugated shipping containers?

A. That is correct.

Q. Where do you make those products?

A. Muncey, Indiana.

Q. Now going to your corrugated shipping containers, do you manufacture all of your corrugated shipping containers that you use with your glass containers?

A. No, sir.

Q. Approximately what percentage would you manufacture?

A. 50 per cent.

Q. Then you buy the other?

A. Yes.

Q. Now, when you say you are engaged in the manufacture of corrugated shipping containers, would that carry you back as far as the mill, or do you just have the corrugating plant?

A. We only have the corrugating plant. We buy our own stock, fabricate boxes.

[fol. 1142] Q. You buy the rolled stock and manufacture that into your board and make your corrugated shipping containers?

A. That is correct.

Q. Now, you say that you make screw-type caps?

A. Yes, sir.

Q. Are they of the non-vacuum variety?

A. They are—yes, that is correct. There are some, after they are applied the vacuum is formed, but that is a simple property of a product that is put in the containers.

Q. And would that be, for example, like in home canning?

A. That's right.

Q. Where the product itself forms steam or something and that in turn forms—

A. That's right; hand-applied in the home.

Q. And I take it that you make no vacuum-capping machinery?

A. We do not.

Q. And you make no vacuum cap?

A. We do not.

Q. Has your company ever made vacuum caps? I am not talking about the home canning variety, but the normal [fol. 1143] commercial variety.

A. We have never manufactured them for commercial

use. We have done some experimenting, but we have never had anything for sale.

Q. Have you experimented also with the manufacture of the machinery, vacuum-capping machinery?

A. Only by virtue of taking an accepted standard machine and making some variations to the head for our experimental purposes.

Q. Now you say that you have experimented with the manufacture of the vacuum caps; is that correct?

A. That's right.

[fol. 1144] Q. What period of time would that cover, what years, approximately?

A. Well, in limited degree from the late 40's up until 1956-'57.

Q. And during that period of time you conducted experiments and sold none of your caps commercially, is that correct?

A. That's right.

Q. What were the factors that caused you to discontinue the experiments with vacuum caps?

A. We simply didn't have the products, to bring our products up to the competitive level that would allow us to market them. In other words, we did not have—we didn't achieve our objectives, our goals, in getting the kind of closures that we felt were the right closures and we discontinued trying.

Q. From your experience with the experiments that you were conducting, does it require a good deal of technical knowledge to manufacture caps?

A. Yes, I think any product like that requires a lot of technical knowledge, certainly.

Q. And your company experimented for approximately 10 or 12 years and were still unable to manufacture a—

Mr. Hughes: I object to that, your Honor.

[fol. 1145] The Court: Yes. I think that is what I would call a conclusive question.

Mr. McAnus: All right, I will withdraw it.

Q. Could you tell me the types, the category types of glass containers that your company makes?

A. We make food containers, both wide mouth and narrow mouth. We make beer bottles, whiskey bottles; we

make bottles for chemical, household and industrial products, and perhaps a few simple items that might fall into the categories of the proprietary or cosmetic lines, but very, very few.

Q. What would your principal lines be?

A. Our principal lines would be wide mouth food containers and whiskey bottles and beer bottles.

Q. Now approximately what percentage of your glass containers is sold in shipping containers?

A. Oh, all of it—I would say, with very few exceptions.

Q. Now what percentage of the selling price of the glass container is represented by the shipping container, approximately?

A. It depends upon the type of end use that the container is designed for and the size of the container, but I would say it would range in the neighborhood of 18 to 25 per cent.

[fol. 1146] Q. What are the other important items of cost that go into the manufacture of glass containers?

A. Labor, fuel, overhead charges, which represent extensive repairs—one has to make furnaces and machinery—and the usual taxes, property taxes, et cetera.

Q. Now your company has one plant on the West Coast?

A. Yes, sir.

Q. Are you familiar with the prices that your plant charges for its products on the West Coast?

A. Yes, sir.

Q. Are you familiar with the prices that your company charges for its glass containers in the eastern part of the country?

A. Yes, sir.

Q. Any by east I would mean east of the Rocky Mountains. Are the prices charged on the West Coast higher or lower than those charged east of the Rockies?

A. They are higher.

Q. And do you know why they are higher on the West Coast?

A. First of all, labor is much higher, fuel is much higher, [fol. 1147] raw materials are much higher.

Q. To your knowledge, do you ship glass containers from your El Monte plant over the Rocky Mountains into the East?

A. Absolutely not.

Q. Do you regularly ship glass containers from your eastern plants over into California?

A. No.

The Court: In other words, for all practical purposes, the El Monte plant is your source of supply for your Pacific customers?

The Witness: That is correct.

The Court: Of course, with certain exceptions.

The Witness: Oh, yes, minor.

The Court: Yes.

Q. When did you build your West Coast plant?

A. 1946-'47.

Q. What were the factors that prompted you to build a plant on the West Coast?

A. Well, at that time, you know, there was quite a shift of population to California, and there were many firms in the Midwest that were moving, at least, were building facilities on the West Coast. Freight rates were mounting, and in order to service those customers, we built a plant [fol. 1148] there to do so and to take advantage of the increased population in that area for our home canning jars.

Q. Does your company service national accounts, and by that I mean customers who have plants located in the central or eastern part of the United States?

A. Yes.

Q. Did those accounts in any way influence your construction of the plant on the West Coast?

A. To some extent, yes.

Q. And could you explain what you mean by that?

A. Well, as I explained earlier, if a company that had facilities in the Midwest was going to build its plant in California, we would like to retain our position as a supplier of that company and so we moved—I mean, we built a plant out there. That is one example. Another example is that other new products were started up out there that we would like to serve, and so we built a plant.

The Court: Can you give me an example of one of those new products?

The Witness: Well, I think in the West Coast, for instance, there were certainly packers in Los Angeles of instant coffee, which was a new product in the market, and

[fol. 1149] baby food customers started packing in glass at that time.

Q. Do you package these products in your plant on the West Coast, that is, products that you—

A. Do we package them?

Mr. McManus: Excuse me. I will withdraw the question and reframe it.

Q. Do you sell or do you manufacture for these products that you just mentioned, containers for baby foods and instant coffee, on the West Coast?

A. We have—I am not sure that we are right at the moment doing it, but we have since we built the plant, yes.

Q. Do you manufacture them in your plants that are east of the Rocky Mountains?

A. Yes, sir.

Q. Do you also sell other types of containers, or what would be the other types of wide mouth food containers that your company manufactures?

A. Peanut butter, mayonnaise, salad products of all types, and you get into a number of pickle items, all the way from fresh pack to relishes. There are quite a number in that category. Then there are jams, jellies and preserves.

[fol. 1150] The Court: Tell me this: As I recall it, you mentioned that you did not make vacuum closures yourself?

The Witness: Yes, I have.

The Court: But you do, I take it, produce wide mouth jars for foods which require vacuum closures, is that right?

The Witness: Yes, sir.

The Court: And your customers use closures made by other companies on those jars?

The Witness: That is right.

Q. Directing your attention to the wide mouth food containers, do you have a stock item type of glass container in the wide mouth food category?

A. We have a number of standard items that are used by packers of different sizes.

Q. Do you make them for the home consumer?

A. Yes.

The Court: Is the jar for home consumption known as a Ball jar or is that a word in the trade?

The Witness: I hope to tell you it is, sir.

The Court: Those for home consumption are quite different in shape and format from the ones which you sell to packers, are they?

[1151] The Witness: Yes, sir.

The Court: Are those the ones where you press a little wire thing down, or is it a screw top?

The Witness: Well, that is an older type, but some of those are still sold in New England and in some of those areas that rather stick to the ways of old canners.

The Court: But the modern jar is a two-piece—

The Witness: It is a two-piece closure. It has a lid and a band. You screw the band down and process the jar, and when it cools forms a vacuum and preserves the food.

Q. You said that you do have stock items on standard jars, wide mouth jars?

A. Yes.

Q. And would they be for the fruit and vegetable products?

Mr. Hughes: I object to that, your Honor.

The Court: Well, I don't understand it.

Will you read the question?

(Question read.)

Mr. Hughes: May we have the preceding question?

[fol. 1152] (Record read.)

The Court: I will allow it, Mr. Hughes.

Mr. Hughes: Your Honor, I think we are again getting into one of these problems of quantity and that sort of thing.

The Court: That is what concerns you at this point?

Mr. Hughes: Yes, it does.

The Court: I will allow this and we will see where we go from here, bearing that in mind.

Q. Would you answer that question?

The Court: The answer is yes, I take it?

The Witness: Yes.

The Court: And are these comparable in size to the metal containers or are they attempted to be?

The Witness: Well, yes, except that I think that there

are certain designations or differences that—when you say, are they, generally speaking, I say some of them are—many of them are.

Q. Mr. Fisher, are you a member of the Glass Container—is your company a member of the Glass Container Manufacturers Institute?

A. Yes, sir.

Q. And do you attend their meetings as a representative [fol.1152a] of your company?

A. Some of them.

Q. Do you represent your company on any of the committees of that organization?

A. Yes.

[fol. 1153] Q. And could you tell me which one, or one?

A. Market Research Promotion Committee.

Q. And for how long a period have you been a member of that committee?

A. Two years.

Q. What is the purpose of the Market Research & Promotion Committee? What does it do?

A. To expand the market for glass containers, I would say is the primary purpose of it.

Q. And as its name implies, it does market research?

A. Yes, sir.

Q. Makes analysis of markets and things of that nature?

A. That's right.

Q. Are you familiar with these market research programs that have been carried out by the Glass Container Manufacturers Institute?

A. Those in the last two years I have been, yes.

Q. And you have read them and studied them yourself?

A. I have, to the extent that one can.

[fol. 1154] The Court: You get more reading matter than you could read, I take it?

The Witness: That's right.

The Court: So do we all.

Q. Do you use that information as guidance in your own sales program, advertising?

A. Well, information that is applicable to us and that is useful to us, we try to use it, yes.

Q. And you rely upon it?

A. Yes.

Q. If it is applicable?

A. That's right.

Q. Now, since you have been a member of this committee, to your knowledge has its advertising program increased or decreased?

A. Are you talking about the dollar spent?

Q. Dollar spent, yes.

A. Yes, it has increased slightly. The rates have gone up.

Mr. McManus: Could I have just a minute, your Honor?

Q. Now, the period of time that you have been with your company, has the glass container generally become heavier or lighter?

[fol. 1155] A. It has become lighter.

Q. And has it still been able to retain its strength even though it has become lighter?

A. Its trend?

Q. Its strength. Is it still as strong a container as it was?

A. Oh, its strength.

Q. Yes, sir.

A. I think it is stronger.

Mr. McManus: Thank you. That is all.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Fisher, would you say that competition in the glass container industry was keen and vigorous?

A. I am sorry. I didn't hear you.

Q. I say, would you say that competition in the glass container industry is keen and vigorous?

A. Yes, sir.

Q. Have you made any recent additions to your plants?

A. We have built a plant in Asheville, North Carolina.

Q. Will you tell me when or about when you completed that plant?

[fol. 1156] A. Well, it started in operation last month.

Q. And it has been building for how long? When did you start work on it?

A. Last fall, or summer, actually. Excuse me.

Q. Would you say that most of your customers use several sources of supply for glass containers?

A. The large ones do, yes, sir.

Q. And would you say that the closures that you make are used on the glass containers of other glass container manufacturers?

A. They are, sir, yes.

Q. And would you say that the closures of other glass container manufacturers are used on your containers?

A. That is correct.

By the Court:

Q. You don't sell your containers with closures; you sell the closures separately from the container, do you?

A. With the exception—

Q. With the exception of home—

A. —home canning, yes.

The Court: Yes.

[fol. 1157] By Mr. Hughes:

Q. Now, you have told us that you do make your own corrugated shipping containers; is that correct?

A. We make a portion of it.

Q. Yes, about 50 per cent of it?

A. That is correct.

Q. And you have your own corrugator; is that right?

A. That's right.

Q. And the machinery for forming the materials into the container?

A. That is correct.

Q. You did have a paper mill that made liner board and corrugated medium, didn't you?

A. Yes.

Q. And the products of that paper mill and liner board factory were for your own use; isn't that correct?

A. Plus sale to others.

Q. And you used the products of that mill for the making of corrugated board, which in turn went into the shipping container; is that correct, during the time when you held, owned those plants?

A. Yes, some of the products of those mills went into [fol. 1158] the box shop.

Q. Did you have two or three mills, do you recall?

A. We had a liner board mill and we had two corrugated strawboard mills, corrugating strawboard mills.

Q. And you sold those plants?

A. Yes, sir.

Q. Now, to the extent that you buy shipping containers from outside sources, are there several sources from which you can obtain shipping containers?

A. Yes, sir.

Q. And do you in fact obtain them from more than one source?

A. We do.

Q. And about how far from your plant are the shipping containers which you buy manufactured?

A. Oh, I think that all of them are within a few hours' delivery in time to the plant.

Q. How are they delivered to the plant?

A. Generally speaking, in trucks or by railroad car.

Q. And do various shipping container manufacturers try to get you to buy their shipping containers?

[fol. 1159] A. Yes, sir.

Q. And would you say that the competition in the shipping container industry is keen and vigorous?

A. Yes, it is.

Q. Now, isn't it true that the proportion of the cost of the shipping containers to the total selling price of glass containers varies considerably with the price and size of the glass containers themselves?

A. Well, it does with the size, I would say. The price hasn't much to do with it.

Q. Well, the size of the glass container would be a factor.

A. Yes.

Q. With some of them you have to have a heavier board than with others; is that correct?

A. Yes.

Q. Would whiskey bottles be an example, an illustration of that? That is a relatively high cost container.

A. Would what?

Q. Shipping containers for whiskey bottles would be an illustration of one where the cost was relatively high?

[fol. 1160] A. That's right; it would be.

By the Court:

Q. Let me ask you this: if you are shipping whiskey bottles to a distillery in corrugated containers, would the distillery use the same corrugated container?

A. Oh, yes. Practically all of the shipping containers that we make are for the reshipment of the product.

Q. There is a reshipment?

A. Yes.

Q. So that in effect what the shipper is buying from you, or in effect what he is doing is purchasing both the glass container and the outside container to ship the completed product in; is that right?

A. That is correct.

Q. Now, will you stamp the corrugated containers for him ahead of time?

A. We print them with his name.

Q. You print them?

A. You print them with his name, identification and everything on.

Q. So-and-so bourbon whiskey?

A. Yes, sir. That is the same with all types of containers [fol. 1161] that we make for reshipping use. We print the sales message or the identification on it.

Q. Whatever it may be.

A. Yes.

The Court: Thank you.

By Mr. Hughes:

Q. And are the shipping containers which you buy from others manufactured to your specifications?

A. Yes, sir.

Q. And do you regard the shipping container as one of the constituent parts of the product which you sell?

A. We do.

Q. And would you say that your total selling price is designed to return a profit over the total cost of the product, including the labor, the fuel, the raw materials, the shipping containers, the overhead and other elements of cost?

A. Yes.

The Court: I take it when you talk of the percentage of cost, the shipping container bears to the balance of the cost, you are also including in that the cost of marking and stamping and labelling the container for customer use, are you?

[fol. 1162] The Witness: That is all done in a printer's slot. It prints and does part of the fabrication at the same time. It is a very simple method to print that message on.

The Court: Yes.

Q. Now, is this home canning jar, the Ball jar, one of the principal items of your product line?

A. It is one of them. It is not the largest item.

Q. That is how you classify it in the product line, confining ourselves of course to glass containers?

A. Of what we make of the industry?

Q. No, what you make?

A. Approximately 10 per cent of our glass containers.

Q. And would you say that any other glass container that you make is the higher percentage of your total container volume?

A. That would take in a number of sizes, of course, in that home canning line, and of course you don't have anything else to compare to that in the food line, why we have a number of sizes of items that probably in total are larger than that, but they would be shipped to many customers.

[fol. 1163] Q. Well, I was under the impression that the home canning jar was the principal, your single principal item in the food container, in your food container line?

A. It isn't.

Q. Now, Mr. Fisher, does your company have available to it sources of credit and capital if it chooses to make use of them?

A. Within reason.

Q. And does your company have more than adequate cash reserve for the business that you are conducting?

A. Sometimes I think not, but most of the time we are able to make ends meet.

Q. Would it be true that except for your home canning jars, that most of your glass containers are made on special molds?

A. Well, now, I am not quite clear in what you mean by "special mold"?

Q. Well, do you have customers who require a sort of custom-made container for their use?

A. Yes, we have several.

Q. Would you say that it was that type of container [fol. 1164] which constituted the greater part of your glass containers, other than the home glass, home canning jars, eliminating them?

A. Well, I would say as an approximation that perhaps half of the containers we make are a standard item, and half of them are private, private mold; so to speak. But I would not want to say that categorically without an accounting.

Q. Do you have a staff of technical men and technicians?

A. Yes, sir.

Q. And you regard them as all good and competent men in their lines, don't you?

A. Yes, sir.

Mr. Hughes: Just one moment, your Honor.

Q. Are beer bottles made on standard molds?

A. Most of them are, yes.

Q. Some are not?

A. Very few.

Mr. Hughes: Yes. All right.

The Court: Anything further, Mr. Hughes?

Mr. Hughes: Nothing.

The Court: Mr. McManus.

[fol. 1165] Redirect examination.

By Mr. McManus:

Q. Now, you have told us that your company made instant coffee and baby food, for example, is that correct?

A. That's right.

Mr. Hughes: Well, your Honor, I am sure Mr. McManus didn't mean to state it that way. They don't make instant coffee.

Mr. McManus: I am sorry.

Q. They make containers to package baby food and containers to package instant coffee; is that correct?

A. That is correct.

Q. Now, would you consider a container for baby food a standard mold?

A. No, I don't think we make anything in standard mold.

Q. Would you consider it a special mold?

A. We call them private molds, yes.

Q. They would be private molds because the company that you would be making them for would have their design on it or something of that nature?

A. Well, the labels' panel or some peculiarity related to their product.

Q. Now going to the glass container that you make for [fol. 1166] instant coffee, would that be a special mold or would that be a standard mold?

A. Some of them are private molds; some of them are standard molds.

Q. And the private molds, when you talk about private mold, you consider it a private mold because it has some designation, customer designation, on it?

A. He purchases the mold; it is his.

Q. I see. Now, going back to your paper mill or mills, I should say, when did you dispose of your liner board and your strawboard mill, approximately?

A. These are approximate dates, but I believe our liner-board mill ceased operations about 1936. The property stood idle; we used it for warehousing purposes and we finally disposed of that property in about 1952 or '53. One strawboard mill we disposed of either during World War II or very shortly thereafter; and the last mill we sold was in 1953 or '54.

Q. And was the last mill you sold a strawboard mill?

A. Yes, sir.

Q. And could you tell me what is a strawboard mill?

A. Well, a strawboard mill is a mill that receives straw, [fol. 1167] either oats, wheat straws, as a raw material, cooks it with soda ash and a few other ingredients; cuts it up very finely after mixing with some pulp, perhaps waste pulp of some kind, to put on a paper machine and made into a sheet, and the properties are such that you use it for the stiffener in the corrugated box. It is the bridge, so to speak, that holds the liner papers apart and makes

your corrugated box. There are other materials that are used. We happen to make strawboard.

Q. And to make the container, the corrugated container, you would need more than a strawboard mill; you would need another type of mill to put the outer coating on the corrugation?

A. You can buy that. That is an open market product. You can buy any of those things.

Q. I understand that. But you don't make corrugated shipping containers solely from strawboard products; is that correct?

A. No, absolutely not. You couldn't make them satisfactorily.

Q. Now, your linerboard mill, would that linerboard mill be able to make corrugated shipping containers?

[fol. 1168] A. The products from the linerboard mill would be the liners that make up the part of the corrugated board.

Q. I see. So that neither the linerboard mill or the strawboard mill alone could make a corrugated shipping container; you need another product.

A. You see, those are only raw material producers. You have to go through a fabricating process to make a box after you get to the material. So the answer is no in either of those mills to make a box.

[fol. 1169] Q. You would have to buy from other types of suppliers in order to make corrugated boxes in addition to what you produce yourself, is that correct?

The Court: I do not get this, Mr. McManus. All that the witness is saying is that you have got certain types of paper and board, and then you have got another plant to make a box. A paper plant does not make a box. You have got to have a box plant, is that right?

The Witness: That is correct.

Mr. McManus: I understand that, your Honor, but I think that there is more to it than that.

Q. As I understand it, in making a corrugated shipping container, you have an inner corrugated liner in the wall, is that correct, an inner corrugation in the wall of the box, in the interior wall?

A. The box is made up of two liners interspaced with a corrugated medium which makes the bridge in there.

Q. The straw board makes that bridge?

A. That is only one product. I can name at least six products that you can use for that bridge in there.

[fol. 1170] Q. I understand that, but from your straw board mill you would be making the bridge, is that right?

A. That's right.

Q. And from your fiber board mill, would that be another form of bridging material?

A. You could make liner material—you could make a corrugated medium which would be obtained in the product, in the beginning of the process.

The Court: But you weren't making bridges in that factory, you were making liners?

The Witness: That's right.

Q. But the only point that I am trying to get straight is, with your fiber board mill and straw board mill, you couldn't, just with those products, make a corrugated shipping container without using other paper, isn't that so?

A. You could use these, the products of those two mills which would supply you with all the raw materials you needed to make a box, but you have to go through a fabricating process after that.

The Court: Mr. Fisher, can you tell us the factors that your company took into account in determining to dispose of this straw board mill, if you recall?

[fols. 1171-1195] The Witness: It is very simple. The mill was an old one, built at the turn of the century. It had lived a life span or it had operated its life span with most of its machinery and you had to rehabilitate the mill and bring it up to date to meet the competitive features and quality features or we had to dispose of it. We decided to dispose of both companies.

The Court: On the theory, I take it; that it was more economic and sounder to purchase the material than to manufacture it in a mill of that category?

The Witness: That is correct.

Q. There is just one more question, Mr. Fisher:

When you purchase your corrugated shipping containers on the open market, does the company that furnishes those

to your company, do they put the design and the name on those containers?

A. Oh, yes.

The Court: Is there anything further?

Mr. Hughes: Nothing further, your Honor.

The Court: Thank you, Mr. Fisher. You may step down.

(Witness excused.)

[fol. 1196] WILSON H. ELLIS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. What is your home address, Mr. Ellis?

[fol. 1197] A. Martinsberg Road, Mount Vernon, Ohio.

Q. By whom are you employed?

A. Lamb Glass Company of Mount Vernon, Ohio.

Q. And in what capacity are you employed?

A. Vice-president and sales manager.

Q. And for how long a period have you been employed, Mr. Ellis?

A. I have been employed for seven years by the company, six years as sales manager, and vice-president for the past year.

Q. And were you formerly employed prior to that?

A. Prior to that I was employed by Anchor Hocking Glass Corporation.

Q. And for how long a period?

A. Approximately three years.

Q. Now, what product or products does your company make?

A. Milk bottles, home canning jars, narrow neck food containers.

Q. And how many plants does your company have?

A. Just the one plant in Mount Vernon.

Q. And how many tanks do you have?

A. We have two furnaces and two tanks.

Q. And could you tell me how many machines?

[fol. 1198] A. Eight machines.

Q. And of what type?

A. We have four IS machines and four Lynch MB machines.

The Court: What is your gross volume of business, roughly?

The Witness: Roughly, \$4,000,000.

Q. And what products do you make on the Lynch machine?

A. The Lynch machines are primarily for manufacture of milk bottles and home canning jars.

Q. And what products do you make on the IS machines?

A. On the IS machines we are making milk and narrow neck food containers.

Q. Excuse me?

A. Milk bottles and narrow-neck food containers.

Q. And how many sections are these machines?

A. We have, let's see—

Mr. Hughes: Are you referring to the IS machine?

Mr. McManus: Excuse me. The IS machines, yes.

[fol. 1199] A. IS machines, we have two five-section machines and two six-section machines.

Q. And can these machines be converted from narrow-neck to wide-mouth?

A. Yes, with the proper equipment.

Q. And can they also be converted from wide-mouth to narrow-neck?

A. That's right. It's an interchangeable process.

Q. Now, in the narrow-neck field of food containers, what generally are the types of containers that you make?

A. Principally, we are making the gallon jug, one 28-ounce gallon jug, narrow-neck, and 16 and 32-ounce capacity cylindrical round containers. Basically, those are the two items we are in at the present time.

The Court: Is that the type you use for fruit packing?

The Witness: Basically for vinegar, fountain syrups, and so forth, lines of that nature.

Q. Now, when you say "fountain syrups," are you talking about the syrup that you would buy at soda fountains?

A. That is correct; and concentrate for bottling companies, like concentrated orange and concentrated strawberry flavor—extracts of that nature, which are sold to the bottling plants.

Q. And from your plant what area do you usually service accounts?

A. Primarily east of the Mississippi River, with the exception of Florida. We do not ship any to Florida.

Q. And approximately what percentage of your accounts would be within 500 miles of your plant?

A. I would say 75 to 80 per cent, in that neighborhood.

Q. Now, do you ship your products in—excuse me. What percentage of your products do you ship in corrugated shipping containers?

A. 100 per cent. Everything we ship is in corrugated.

Q. And what does the cost of the shipping container, what is the relationship of that, percentage-wise, to the price of the glass container?

A. Ours at the moment is approximately 8 per cent.

Q. Has it been more or has it been less?

A. It has been less. For example, in as recent as 1956 [fol. 1201] it was approximately 5½ per cent. But due to the diversification program which we have undertaken, and getting into other types of containers other than milk, our carton cost have become a greater percentage of the sales price of the item.

Q. And why is that?

A. Primarily because milk containers were packed in open-top trays. In other words, to cite an example, they only come up to the holder of the containers. It is not a completed closure which all your food containers are packed in a complete carton. You require less corrugation, so therefore your cost per unit was considerably less than it would be had we used a full-type carton.

The Court: How many milk bottles does a carton take, usually?

The Witness: We pack, for example, quarts, two dozen to the tray, and the tray height—well, to cite you an example again, the quart milk container is 8⅝ths inches in height.

We use a tray 6 inches in depth. The rest of it is open, which cuts your carton cost considerably.

[fol. 1202] Q. And I think you stated as you had moved into the food line the percentage cost has increased; is that right?

A. That is correct, sir.

Q. Now, I would like to get back and ask you, you say you make your milk bottles on your Lynch machines.

A. Milk bottles and home canning jars.

Q. Is the milk bottle a wide-mouth container, considered to be or not?

A. Yes, sir; it would fall under the category of wide-mouth.

Q. Are you able to make wide-mouth ware on your Lynch machines?

A. Other than the milk bottles and mason jars, we are not. It is not adaptable to general line of wide-mouth food containers such as used by the canning industry and people like that. The machine is not adaptable to that type of production.

Q. Is your company a member of the Glass Container Manufacturers Institute?

A. Yes, they are.

Q. And do you attend their meetings as your company representative?

[fol. 1203] A. Yes, I do.

Q. For how long a period of time have you been doing this?

A. Well, since 1956.

Q. And are you a member of any of their committees, or have you been since 1956?

A. Yes, I am on their Market Research and Promotion Committee.

Q. And for what period of time have you been a member?

A. Since '56.

Q. Could you tell me the purpose of this committee?

The Court: Well, now, Mr. McManus, we have had the purpose of the committee from Mr. Fisher, who, I understand, was chairman of that committee.

Mr. McManus: Your Honor, what I want to show is that he is familiar with the committee and with the reports and

studies they make, and that his company relies upon these reports.

The Court: Well, ask him that.

By the Court:

Q. Do you follow the activities of the committee pretty closely?

[fol. 1204] A. Yes, sir.

Q. Do you read their literature?

A. Yes, sir.

Q. You attend their meetings from time to time?

A. Yes, sir.

Q. In your business do you take into account the literature they send in formulating your own policy?

A. Yes, we do.

The Court: All right.

Mr. McManus: That is all I have.

The Court: Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Ellis, do most of your customers use more than one source of supply for their glass containers?

A. I say by and large that is true, with the exception of possibly a few small users, who do not buy sufficient quantities to have more than one supplier.

Q. Would you say that competition in the glass container industry was keen and vigorous?

A. Most assuredly so.

Q. Do you have more than one source of supply for the [fol. 1205] corrugated shipping containers that you use?

A. Yes, we do.

Q. How many do you have?

A. Oh, approximately five.

Q. And are they mostly from areas fairly near your plant?

A. Most of them within a radius of 175 miles.

Q. And would you say that competition in the corrugated shipping container business was keen and vigorous?

A. It is.

Q. And would you tell us how the shipping containers are delivered to your plant?

A. They are all delivered by truck in our particular case.

Q. And would you say that proportion of the cost of the shipping containers to the total selling price of the container varies with the size or other characteristics of the container?

A. That is correct.

Q. That is what you were explaining to his Honor on direct examination.

A. Right.

[fol. 1206] Q. Are your shipping containers manufactured to your own specification?

A. That is correct; with the exception of some items in the food line, the narrow-neck food line, where the carton may be specified by the customers for certain requirements to meet his specifications.

Q. But for the most part?

A. For the most part it is built to our specifications.

Q. It is built to specification.

A. That is correct.

Q. Do you regard the shipping container as one of the constituent parts of the product that you sell?

A. Insofar as the selling price is concerned?

Q. Yes.

A. Absolutely.

The Court: Let me ask you this: is that also true of milk bottles?

The Witness: Yes, sir.

Q. And your total selling price is designed to return a profit over the total cost of the product, including all of the elements of cost, such as labor, fuel, raw materials, shipping containers, overhead, and items of that kind?

[fol. 1207] A. That is correct.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, nothing further.

The Court: You may step down. Thank you.

(Witness excused.)

The Court: Next Witness.
Mr. McManus: Mr. Collins.

GEORGE F. COLLINS, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

- Q. What is your home address, Mr. Collins?
A. 2211 East 41st Street—street address?
Q. Yes, fine.
A. 2211 East 41st Street, Tulsa, Oklahoma.
Q. And with what company are you associated?
A. Liberty Glass Company, Sapulpa, Oklahoma.
Q. Will you talk just a little bit slower, if you will, and a little bit louder?
A. I will.
Q. And in what capacity?
A. I am president of the glass company.
[fol. 1208] Q. And for how long a period of time have you been president?
A. Since May of '39.
Q. And were you employed by the glass company prior thereto?
A. Yes, since '36, 1936.
Q. And who was president prior to that time?
A. My father.
Q. Is your company a closely-held corporation?
A. It is.
Q. Could you give us an approximation of your gross sales? You could give it in a range if you would rather not be too specific.
A. Net sales, I'd say over \$7,000,000.
Q. Around \$7,000,000.
A. Yes.
Q. You have just the one plant in Sapulpa?
A. Just the one plant.
Q. And how many tanks do you have?
A. Four. We call them four furnaces, or tanks.

Q. And how many machines?

A. 11 machines.

Q. And what are the type of machines that you have?
[fol. 1209] A. We have Lynch machines, which is a Lynch 10 machine. We have a Lynch MB machine, which is a milk bottle machine, and we have the Hartford IS machines.

Q. And what do you make on your Lynch MB machines?

A. That is milk bottles only.

Q. And what do you make on your Lynch 10s?

A. Beverages mainly—I'd say only, almost 95, 98 per cent.

Q. And what do you make on your Hartford IS equipment?

A. Both milk and beverage bottles.

Q. And when you say "beverage bottles"—

A. I am talking about the soft-drink bottles.

Q. Not beer?

A. No, not beer.

Q. What percentage of your sales are within 500 miles of your plant?

A. I'd say in the contiguous area, let's say, the contiguous states, I would say over 60 per cent of our sales.

Q. Do you ship any of your products to the West Coast?

• [fol. 1210] A. Very few.

Q. And what type would those be?

A. Milk bottles.

Q. And have you always shipped milk bottles to the West Coast since you have been president of the Company?

A. Yes; yes, very definitely.

Q. And has the amount of milk bottles that you shipped to the West Coast over that period of time increased or decreased?

A. Decreased.

Q. Are you able to ascribe a reason for this decrease?

A. Yes. There have been three manufacturers on the West Coast that have gone into milk bottles since the time we have been shipping there.

Q. And because of your location you—

A. The service and so forth that we could render would not be as good as the three companies that went into the milk bottle picture.

Q. Now, what percentage of your sales are in corrugated shipping containers?

A. Most of them are. We shipped—most of our sales are beverages and milk, and they are shipped in beverage trays [fol. 1211] or cartons, with the exception of wooden cases that are sometimes supplied by our customers.

Q. And when you said "wooden cases," would that be your milk bottle customers?

A. No, that is beverage bottles.

Q. Beverage bottles?

A. Your regular beverage case, wooden case.

Q. Would you mind tell us who some of your beverage bottle customers are?

A. No, not at all. Coca-Cola, we ship Coca-Cola bottles; Dr. Pepper; Pepsi Cola; Canada Dry; 7-Up—we try to cover the beverage field.

Q. And do you have to make a glass other than flint glass for these?

A. Very definitely.

Q. What type of glass do you make for these soft drink bottles?

A. One glass is an emerald green glass. The other glass is what we call a Georgia Green glass, which is the type the Coca-Cola bottles are made of.

Q. And could you estimate the percentage of your selling price which is represented by corrugated shipping containers, approximately?

[fol. 1212] A. I would say it's around 14 to 16 per cent.

Q. And is your company a member of the Glass Container Manufacturers Institute?

A. Definitely, it is.

Q. And do you attend their meetings as representative of your company?

A. Yes, I do.

Q. And for what period of time have you been attending them?

A. Ever since it was organized as GCMI.

Q. And that would be from approximately when?

A. Oh, gosh, that was organized after—oh, in '42, I think it was, '42 or '41, I mean.

Q. And you have been a member since about that time?

A. Yes, I have been a member since that time, we have, our company.

Q. Are you a member of any of their committees?

A. Yes.

Q. Which one?

A. There is a Milk Bottle Promotional Committee that I am a member of, and there was recently organized a Beverage Bottle Committee, that I have been made chairman of, and they have only had an organization meeting [fol. 1213] on that so far.

Q. And what is the purpose of the Beverage Bottle Committee?

A. Well, the one that has just been organized is of course to consider the same thing as the Milk Bottle Promotion Committee, to expand our sales and to compete with the competitive materials like soft-drink cans, for example. That is going to be the one big problem.

Q. And when was this Beverage Bottle Committee organized?

A. The one I am speaking of, just this year.

Q. Just this year. And what was the purpose—why was the Milk Bottle Promotion Committee organized, if you know?

A. Well, it was to expand the sales of milk bottles, and to also do everything we could to ward off a paper container, which made inroads into our field.

Mr. McManus: That is all I have, your Honor.

The Court: All right, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Collins, how old is your company?

[fol. 1214] A. The predecessor to the Liberty Glass Company was Premium Glass Company, in 1912.

Q. And your father ran the business before you, and now you are running it; is that right?

A. He founded the business in 1912, yes, sir.

Q. And would you say that the competition in the glass container industry was keen and vigorous?

A. I sure would.

Q. Would you say that most of your customers use more than one source of supply for their glass containers?

A. We love to sell our customers a hundred per cent, but I think—yes, they do, our customers buy from other glass companies, naturally.

Q. Now, do you have more than one source of supply for the corrugated containers you use?

A. Yes, we do.

Q. About how many sources do you have?

A. We have five, three main ones. Five.

Q. I didn't catch that. Five?

The Court: Three main ones.

A. Three main ones.

Q. Yes. And are those sources of supply fairly close to your plant?

[fol. 1215] A. Fairly close.

Q. How far away would you say the furthest was?

A. Well, the shipping plant, I'd say, Louisiana, Springdale, or something like that.

Q. Are they delivered, are the corrugated container shipments delivered to your plant by truck?

A. Mostly by truck.

Q. What other means is used?

A. By rail, if any.

Q. And is the competition in that field keen and vigorous for your business?

A. Yes.

Q. Would you say that the proportion of the cost of the shipping container to the total selling price of the container varies with the size of the container?

A. And type, yes.

Q. And type of container.

A. Yes.

Q. Now when you were giving us that range of percentage, you were thinking in terms of the variation in cost of the different containers; is that correct?

A. That's right.

Q. Are your shipping containers manufactured to your [fol. 1216] specifications?

A. Yes, and our customers'.

Q. And do you regard the shipping containers as one of the constituent parts of the product you sell?

A. Yes.

Q. And is your total selling price designed to return a profit over the total cost of the product, including the various elements of cost, which would include the corrugated containers?

A. Yes.

Mr. Hughes: Just one moment.

Q. Has the number of beverage bottles sold by your company increased since 1955?

A. Yes.

Mr. Hughes: That is all.

The Court: Anything further?

Mr. McManus: Just one question, your Honor.

Redirect examination.

By Mr. McManus:

Q. Now, you stated that your customers have other sources of supply for glass soft drink bottles; is that correct?

A. Yes.

[fols. 1217-1218a] Q. Do your customers have other sources of supply for soft drink containers other than glass?

A. Yes.

Q. And what type of container would that be?

A. Other soft drinks are cans, they are cans.

Mr. McManus: That is all, your Honor.

The Court: All right, thank you, sir. You may step down.

(Witness excused.)

[fol. 1219] JOHN R. HARNNESS, called as a witness in behalf of the Government, being first duly sworn, testified as follows;

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Acton, Indiana.

Q. By whom are you employed?

A. Fairmount Glass Works, Inc.

Q. Where is that located?

A. Indianapolis, Indiana.

Q. How long have you been with the company?

A. Approximately 25 years.

Q. And your present position is that of president?

A. Correct.

Q. How long have you held that position?

A. Four years.

Q. And what have been your prior positions?

A. Vice-president, sales manager and director.

Q. And you are familiar with the general operations of your business in that period of time?

A. Yes, sir.

[fol. 1220] Q. How many plants do you have at the present time?

A. One.

Q. And that is located where?

A. Indianapolis.

Q. Sir, was your net dollar volume in 1959 under \$12 million?

A. Yes, sir.

Q. Sir, what have been the principal types of glass containers which your company has produced and did produce since 1956?

A. Liquors, wines, pharmaceuticals, household chemicals, general line.

Q. Sir, can you estimate what percentage of your business in this period had been devoted to such types of containers?

The Court: Wait a minute. I don't follow that. What do you mean by such types. I thought he told us the types.

Mr. Greenberg: Liquors, wines, pharmaceuticals and household chemicals.

Mr. Hughes: He testified to that.

Mr. Greenberg: I will try to rectify it. The witness misunderstood me.

[fol. 1221] The Court: All right.

Q. Sir, referring now to liquors, wines, pharmaceuticals and household and chemical containers, can you estimate what percentage—

A. 75 per cent of that.

Q. And has your company in your experience operated only east of the Rocky Mountains?

A. Yes.

Q. Can you estimate what percentage of your company's containers in your experience have been sold within a 400-mile radius of your plant?

A. 90 per cent.

Q. How many glass melting tanks does your company have?

A. Four.

Q. Has your company in your experience manufactured closures for glass containers?

A. No, sir.

Q. Has it manufactured corrugated shipping containers?

A. No, sir.

Q. Processing line machinery?

A. No, sir.

Q. So that all of your earnings come solely from the [fol. 1222] sale of glass containers?

A. Entirely.

Q. And can you estimate what percentage of your annual production from 1956 to the present time has been shipped in paper corrugated shipping containers?

A. All in paper shipping containers and 90 per cent in reshipping cases.

Q. That is a corrugated container?

The Court: When you say reshipping cases, you mean cases that the customers can use to reship their products in?

The Witness: Yes, sir.

The Court: In other words, you manufacture those or you have those manufactured so that they are sold to your customer containing the glass container, and he in turn when he fills it, uses the corrugated container to ship out the completed product?

The Witness: That is correct, sir.

Q. Sir, can you estimate for us what percentage of your total cost from 1956 to the present has been represented by these shipping containers, both reshipping and otherwise?

A. An average of 15 per cent.

[fol. 1223] Q. What is the size of your sales force at the present time?

A. We have about fifteen men. We have no sales force as such. We deal entirely through manufacturers' representatives.

Q. Do they handle other products?

A. In some instances, yes.

Q. How many employees in all, including clerical help, messengers and so forth do you have?

A. Approximately 750.

Mr. Greenberg: May I please have the booklet from the GCMI?

(Exhibit handed to Mr. Greenberg.)

Q. Sir, I direct your attention to page 20 of Government's Exhibit 358 for identification and ask you—

Mr. Hughes: Excuse me, isn't the only part of the document that constitutes the exhibit just that single page?

Mr. Greenberg: I think that was established the last time that I referred to it.

Q. I direct your attention to page 20 and ask you to scan the list.

(Witness examines exhibit.)

[fol. 1224] Q. Sir, have you become familiar with the activities of some of the companies on that list?

A. Yes.

Q. How have you gained this familiarity?

A. Mainly through associations in GCMI activities.

Q. Have you been to some of the plants?

A. Yes, I visited several of them.

Q. Would you go down the list, sir, and tell us which of the companies on that list have operations similar to yours or smaller?

Mr. Hughes: Objection.

The Court: Objection sustained.

Q. Would you, sir, based on your observations, your perception, your eyes, tell us, sir, which of the companies on that list have operations similar to yours or smaller?

Mr. Hughes: Same objection.

The Court: I will overrule that objection.

You are confining yourself now, Mr. Witness, to plants that you have personal knowledge of by having been there and looked at them.

The Court: Foster-Forbes Glass Company, Tygart Valley Glass Company:

[fol. 1225] Q. Is that a subsidiary or a division of another company?

A. It is now.

Q. When was it acquired by Brockway?

Mr. Hughes: I object to that, your Honor.

The Court: We have had all of that.

Mr. Greenberg: No, we did not have that yet.

Mr. Hughes: I object to that.

The Court: You had the Brockway man here and if you wanted him to tell you when it was acquired, the time and place to get that was from Brockway and not by indirection from this witness.

Mr. Greenberg: Your Honor, we will do that.

The Court: All right.

Q. Have you covered the list?

A. Of the companies that I have visited and seen first-hand, yes.

Q. Now, at the GCMI meetings do you get into discussions with these glass container manufacturers about improvements in their plants and about what they have in their plants and things of that nature?

Mr. Hughes: I will object to the form of that question.

[fol. 1226] The Court: I will allow it.

Q. Do you?

A. In some instances, yes.

Q. Sir, have you gained familiarity with the type of operations that any of these companies have through your association in the industry?

A. Yes.

Q. Could you tell us in detail how you have gained this familiarity?

A. Through discussions and committee work.

Q. Would you go down the list, sir, and tell us which of these companies have operations similar to yours or smaller?

Mr. Hughes: I object to that.

The Court: Sustained.

Mr. Greenberg: I have no further questions.

Cross-examination.

By Mr. Hughes:

Q. Mr. Harkness, will you tell us whether your sales have increased over the period from say 1955 to 1959?

A. Yes, sir.

Q. And could you express that in a percentage?

Mr. Greenberg: I am going to object, your Honor, to a question of that type until a foundation has been laid for [fol. 1227] it. If he wants to ask—

The Court: What sort of a foundation do you want?

Mr. Greenberg: If he wants to ask what the sales figures are instead of an estimated percentage, there is no basis for it.

The Court: You have already brought out yourself that his sales were less than \$12 million.

Mr. Greenberg: Yes, sir.

The Court: And I presume that you did that and expressed it in those terms for the reason that you did not want to ask him for precise figures.

Mr. Greenberg: That is correct, your Honor, but we do not even have a range or a base figure to which we can apply a ratio to determine—

The Court: Then I am going to let Mr. Hughes cross-examine on the actual figures, if that is what you want. If

you want to expose your witness to that, that is your business.

Mr. Greenberg: We have no desire to do that, your Honor.

The Court: Then if that is so, I am going to strike your estimate of \$12 million.

Mr. Greenberg: I withdraw the objection.

[fol. 1228] Q. Mr. Harkness, would you—

The Court: Mr. Greenberg, you cannot eat your cake and have it, too. This thing has got to cut both ways. Go ahead.

Q. Would you tell us approximately what per cent that increase has been from 1955 to 1959?

A. Between 25 and 30 per cent.

Q. And during the period from 1955 to 1958 were your earnings on an uptrend, that is, from 1955 to 1958?

A. Yes.

Q. And what about your earnings in 1959, were they up or down over 1958?

A. They were down.

Q. Were there any operating reasons that caused that decline in earnings?

A. Yes, sir.

Q. Would you tell his Honor what they were?

A. The usual and unusual expenses attached to the starting up of a new installation.

Q. Will you tell us what that new installation was?

A. We increased our manufacturing facilities with the installation of an additional tank which increased our production capacity by approximately 40 per cent.

Q. And it was that installation and the starting up costs and that sort of thing that affected your earnings in 1959, is that correct?

A. I say in the main, yes.

Q. Now, would you say, sir, that competition in the glass container industry is keen and vigorous?

A. Very definitely.

Q. And most of your companies have more than one source of supply for glass containers, do they not?

A. Yes, sir.

Q. Is the only thing you make glass containers?

A. Yes, sir.

Q. Now are Anchor Hocking closures used on your glass containers?

Mr. Greenberg: I am going to object, your Honor, until we have a foundation for that. How would he know that only Anchor Hocking closures are used?

The Court: Let me say this, Mr. Greenberg:

If the president of this company does not know what closures are used on his containers, he is not as good a president as I think he is.

[fol. 1230] Mr. Greenberg: I also object to the question, your Honor, on the ground that it is ambiguous. Is Mr. Hughes referring to 100 per cent of his containers, some part of his containers or a substantial portion?

The Court: All right, reframe your question.

By Mr. Hughes:

Q. Are Anchor Hocking closures used on your glass containers?

A. Some of them, yes.

Q. Are Owens-Illinois closures used on your containers?

A. Yes, sir.

Q. Are the White Cap Company closures used on your containers?

A. Yes, sir.

Q. And the Ball Company closures?

A. Yes, sir.

Q. And those of the Bernardin Company?

A. Yes, sir.

Q. And Armstrong?

A. Yes, sir.

Mr. Greenberg: Your Honor, I am going to object to the use of the term "closures" at this time. There are various [fol. 1231] types of closures produced by these various companies.

The Court: You can bring that out on redirect, if you want to.

Q. Do you have more than one source of supply for your corrugated shipping containers?

A. Yes, sir.

Q. About how many suppliers do you have?

A. Five.

Q. And could you tell us about how far away the farthest one is from your plant?

A. The fabricating plants are generally within 100 miles of our plant, although we do get some deliveries direct from the mills which could be four or five hundred miles away.

Q. And are the containers, the shipping containers, delivered to your plant for the most part by truck?

A. For the most part, some by car.

Q. That is rail car?

A. Yes, sir.

Q. Would you say that the competition for your shipping container business is keen and vigorous among your suppliers?

[fol. 1232] A. Definitely.

Mr. Greenberg: Your Honor, I am going to object to the use of the term "competition" until it is made clear as to whether it is price competition, service competition, or something of that nature.

The Court: Overruled.

Q. Isn't it a fact that the proportionate cost of the shipping containers to the total selling price of the glass containers varies with the shape and size of your containers?

A. Yes, sir.

Q. Are your shipping containers manufactured to your specification?

A. Yes, sir.

The Court: Or your customers' specification?

The Witness: As given to us.

The Court: And you pass those on?

The Witness: Yes.

Q. Do you regard shipping containers as one of the significant parts of the product that you sell?

A. Yes.

Q. Is the total selling price designed to return a profit to you over the total costs of the product, including labor, [fol. 1233] raw material, overhead, shipping containers, and any other elements of cost?

A. Yes, sir.

Q. Is your company in any way affiliated with the Inland Container Company?

A. Inland Container is our largest corrugated supplier. Does that answer your question?

Q. Is there any relationship between it beyond that, between your company and the Inland Container Company?

A. As far as the Inland Container Company itself, no.

Q. Do you have any stock interest in the Inland Container Company?

A. No.

Q. Does it have any stock interest in your company?

A. Not the Inland Container Company as such. Its president, Mr. George B. Elliott owns a small block of stock in our company.

Q. What is the business of the Inland Container Company, is it a manufacturer of corrugated containers?

A. Yes, sir.

[fol. 1234-1251] Q. Is that its only business, so far as you know?

A. It manufactures corrugated board as well as boxes. I think that is its main business, yes.

Mr. Hughes: No further questions.

The Court: Anything further, Mr. Greenberg?

Mr. Greenberg: No further questions.

The Court: All right, thank you, sir. You may step down.

(Witness excused.)

[fol. 1252] CHRISTOPHER H. BUCKLEY, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. At 209 Marmaroneck Road, Scarsdale, New York.

Q. What is your present position?

A. My present position is Special Projects Engineer, Sales Engineer, for Kaiser Aluminum & Chemical Corporation.

Q. What has been the duration of your employment with Continental Can—

The Court: One minute.

Mr. Greenberg: Pardon me?

The Court: The witness said that he is employed by Kaiser Aluminum. Has he been employed by Continental Can?

Mr. Greenberg: Yes.

The Court: Then ask him, were you employed by Continental Can and how long were you employed by them.

Mr. Greenberg: All right.

[fol. 1253] By Mr. Greenberg:

Q. Were you employed by Continental Can?

A. Yes.

Q. What was the duration of your employment?

A. From June 1953 to October 1956.

Q. What positions did you hold with the company during that period of time?

A. Products sales manager for beer and carbonated beverages.

Q. Now can you briefly describe for us what your duties and responsibilities were in that position?

A. Well, I was responsible for the promotion and sale of cans for soft drinks and beer cans for that market.

The Court: That was company-wide, was it?

The Witness: Company-wide.

Q. You were national products manager?

A. That's right.

Q. Sir, would you describe for us the types of reports and memoranda, et cetera, that your staff and yourself executed during your employment as products manager?

Mr. Hughes: Your Honor, I think that we would be making more progress if we took this on a document by [fol. 1254] document basis.

The Court: Let us go to the documents and then see what

happens. If you have to go into more detail we can do it then.

Mr. Greenberg: I do have some other questions, your Honor. I realize that this is the first run on this type of witness and I would want to explore the other departments that his group was associated with.

The Court: All right, you can do that.

What were the functions of your department, what were the functions of other departments and what was the relationship between them. You may ask him that.

Mr. Greenberg: All right.

Q. Now, sir, what was the function of your group?

A. Well, we were to promote the sale of soft drinks and beer containers, and also we were responsible for the profitability of those particular containers.

Q. How did you go about doing that?

A. Well, one of the things, of course, was to contact the sales force through various sales memos, pointing out the [fol. 1255] advantages of cans for those two products, beer and soft drinks, and that is essentially what we did.

Q. Sir, were there any other departments related to your department in some way?

A. Well, not directly, but we did work closely with the market research department, the advertising department, contracts, and so on.

Q. Did your staff receive copies of documents from the market research department?

A. Yes.

Q. And from the other groups that you mention?

A. Yes.

Q. I show you Government's Exhibit G-600-A and ask you if you recognize it.

A. Yes.

Q. And can you identify it?

A. Yes.

Q. Would you tell us what it is?

A. It is a products bulletin to promote a new size soft drink can, a cap-seal soft drink can.

Q. Do you know, sir, what distribution was made of this document?

The Court: Was it prepared by you or under your supervision [fol. 1256] vision and direction?

A. Yes, sir, it was.

Q. Do you know what distribution was made of it?

A. It was sent to all of the salesmen at the district and division levels.

The Court: Do you offer it?

Mr. Greenberg: The Government offers this document in evidence.

The Court: Is there any objection?

Mr. Hughes: May I ask some questions?

Mr. Greenberg: This is voir dire?

The Court: Yes, on voir dire.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Buckley, in so far as you know, was this document circulated outside the company.

A. No, as far as I know, it was not.

Q. And do you know whether any action was taken upon this document of any kind by anybody else in the company?

A. No.

Mr. Hughes: No objection.

The Court: Let me ask you this, Mr. Buckley:

Do you know what your salesmen did, having gotten this [fol. 1257] bulletin?

The Witness: Well, they were supposed to use the bulletin and contact potential users of soft-drink containers.

The Court: In other words, according to your internal arrangements, these salesmen were supposed to go out and sell this thing?

The Witness: That is right.

The Court: Is there any objection?

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit G-600-A for identification received in evidence.)

By Mr. Greenberg:

Q. Sir, I now show you Government's Exhibit 613 marked for identification. Do you recognize it?

A. Yes.

Q. What is it?

A. Well, it is a promotion piece of material that was sent out to the salesmen, and once again it was prepared by my department.

Q. Did you prepare this document?

A. I believe it was prepared mostly by my assistant and I helped him on it, but I think he did more work on it [fol. 1258], than I did.

The Court: You reviewed it after he prepared it?

The Witness: Yes, that is right.

Mr. Greenberg: The Government offers G-613.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Did this receive any outside circulation, so far as you know?

A. So far as I know, it didn't.

Q. Do you know of any action taken by any of your superiors in the Continental Can Company on this document?

A. No.

Mr. Hughes: I object to it.

The Court: Overruled.

(Government's Exhibit G-613 for identification received in evidence.)

By Mr. Greenberg:

Q. Mr. Buckley, I show you G-617. Can you identify it for us?

A. Yes, that is another products bulletin discussing the economics of cans for soft drinks.

The Court: Was this made under the same circumstances [fol. 1259] and distributed in the same manner?

The Witness: Yes, it was.

Mr. Greenberg: The Government offers this.

The Court: You may cross-examine.

Mr. Hughes: Which document is this?

Mr. Greenberg: G-617.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Do you have the document there before you?

A. No, I don't have it in front of me.

The Court: Let the witness have the document please.

(Mr. Greenberg hands document to the witness.)

Q. Mr. Buckley, who actually prepared this document, do you know?

A. Well, most of the work in this document was done by Mr. Carey and Mr. Leonard, who was an engineer with the company at that time.

Q. And this document purports to summarize, does it not, certain activities which these gentlemen were engaged in and submitted in the form of this report, is that correct?

A. That is correct.

Q. You did not actually participate, did you, in the visits [fol. 1260] that these gentlemen made to the places that are indicated in this memorandum?

A. No.

Q. You were not present when there were discussions with soft drink manufacturers of the items of cost which purport to be indicated in that?

A. No, I wasn't there.

Q. Whatever happened to this document, you do not know?

A. No, I don't know.

Q. Was any action taken on it so far as you know by anybody?

A. No.

The Court: Was it distributed to the salesmen?

The Witness: It was distributed to the salesmen.

The Court: In the same manner as the other documents?

The Witness: In much the same manner, yes, sir.

Mr. Hughes: I object to it.

The Court: Objection overruled.

(Government's Exhibit G-617 for identification received [fol. 1261] in evidence.)

By Mr. Greenberg:

Q. Sir, I show you Government's Exhibit 445. Do you recognize that document?

A. Yes.

Q. Did you receive this document during the period dated in the document?

A. Yes.

Q. Do you know what was done with it after you received it, what distribution was made?

A. No, I don't.

Mr. Greenberg: Your Honor, I think that we can expedite this proceeding in this respect:

The rest of the documents are documents which this witness will testify he received copies of. These are listed in this book of exhibits, and, if I may, I will read off the numbers and he can refer to the documents.

The Court: All right.

Q. Mr. Buckley, would you turn to G-601?

Mr. Hughes: Weren't you on 445?

The Court: We are going to get information first with respect to a number of these documents. Mr. Greenberg wants to form a pattern.

[fol. 1262] Mr. Greenberg: I am not saying that we will necessarily offer the rest of these documents at this time, but these documents were prepared by the market research department and were received—

The Court: Let us first find out whether they were or not.

Mr. Greenberg: All right.

Mr. Hughes: Your Honor, I suppose that it should not matter to me, but it does seem to me that if there is going to be any examination on the voir dire, as I feel there will be, on many of these documents, and if Mr. Greenberg is going to examine this witness on them without taking them up on a document by document basis, that that would make it very confusing.

The Court: No, I do not think it will, Mr. Hughes, because we will first get the general testimony with respect to these documents, and such of those that you wish to examine on ~~on~~ the voir dire, you can do so seriatim, and we will have a picture of the situation.

By Mr. Greenberg:

Q. Sir, would you turn to G-601. Do you have that?
[fol. 1263] A. Yes.

Q. Do you recognize that document?

A. Yes.

Q. Did you receive a copy of that document?

A. Yes.

Q. Do you recall what was done with it?

A. No.

Q. G-602?

A. Yes.

Q. Do you recognize the document?

A. Yes.

Q. Did you receive a copy of it?

A. Yes.

Q. Do you recall what you did with it when you got it?

A. No.

The Court: Who is Mr. D. H. Walker, for example?

The Witness: He was in charge of the commercial research department for Continental Can.

Q. Sir, if you recall, have you gotten reports of this type, and do you recall what you did with them after receiving them?

Mr. Hughes: I object to that.

[fol. 1264] The Court: I will sustain the objection. Reframe the question.

Q. Let me go over the rest of the list and maybe I can direct my questions that way.

Turn to 608, please. Do you recognize that?

A. Yes.

Q. Did you receive a copy of it?

A. Yes.

Q. Can you recall what you did with that document when you got it, what use you made of it?

A. No.

Q. 610—will you turn to that?

The Court: Who is Dana Hill?

The Witness: Well, he followed Mr. Walker in the same position.

Q. Do you recognize that?

A. Yes.

Q. Did you receive a copy of it?

A. Yes.

Q. Can you recall what you did with it?

A. No.

Q. 604—did you receive a copy of that?

A. Yes.

[fol. 1265] Q. 605—did you receive a copy of that?

A. Yes.

Q. Can you recall what you did with either 604 or 605 when you received it?

A. No.

Q. 607—did you receive a copy of that?

A. Yes.

Q. Do you recall what you did with it when you received it or what use you made of it?

A. No.

Q. 614—you received a copy of that, is that correct?

A. Yes.

Q. Do you recall what you did with it?

A. No.

Q. 615—

The Court: Who is Mr. Everett?

The Witness: I don't know Mr. Everett, your Honor, but I believe he was in the same commercial research department.

Q. Would you turn to 615?

A. Yes.

Q. You received a copy of it?

A. Yes.

[fol. 1266] Q. Do you know what was done with it?

A. No.

Q. Now, sir, turning to—

The Court: Let me ask you this: Let us take 615 and the distribution shown here to Fogarty, Wojtul, Fisher, Neuman, Johnson, Ylvisaker, Murray, Donahue, Larkin, Fenn, Blinn, Morgan and Hill. Of those gentlemen, how many of them do you know?

The Witness: Well, I know all of them.

Q. Who were they, tell us respectively?

A. Well, at the time Mr. Fogarty was executive vice-president of the company in charge of the metal division.

Mr. Wojtul was general sales manager—vice-president in charge of sales for the company. Mr. Fisher was in charge of market research for the company. Mr. Neuman was the general sales manager of the company. Mr. Johnson was the advertising manager of the company.

Q. Mr. Ylvisaker, was director of staff, which I guess you might say that he was Mr. Fogarty's assistant. Mr. Murray was the eastern division general sales manager. Mr. Donahue was the products engineer in the eastern division [fol. 1267] for beer and soft drinks. His position was somewhat of a counterpart of mine at the division level.

Mr. Larkin was the general sales manager in the central division.

Mr. Fenn was the products manager in the central division. Mr. Blinn was the general sales manager of the Pacific division.

Mr. Blinn might have been promoted to vice-president of the Pacific division, I am not sure which.

Mr. Morgan was the district sales manager in the Los Angeles district.

And Mr. Hill was the commercial research head reporting to Mr. Fisher.

Mr. Greenberg: If the Court please, I would like to make one comment:

If your Honor will recall, the Government's motion to produce asked for studies at a fairly high level, and therefore we will frequently see a long list of "c.c." or people who received copies, and I would just like to ask, since this is the first witness of this type, whether your Honor would like the Government to identify by position the persons who received copies of these documents.

[fol. 1268] The Court: Well, I just asked him that.

Mr. Greenberg: Very well.

Q. You were on 615.

The Court: 615 is the last exhibit that we were dealing with.

Q. Will you turn to 614. Do you see any additional names?

The Court: There are no additional names on there.

Mr. Greenberg: No.

Mr. Hughes: Your Honor, just in the interests of saving time, I think your Honor should know that there is a stipulation between counsel which stipulated to certain facts with reference to these or to many of these documents.

Are we now on document 615?

Mr. Greenberg: That is right.

Mr. Hughes: For example, there is a stipulation—and it is now an exhibit in the case, is it not?

Mr. Greenberg: Yes, that is right.

Mr. Hughes: That "This document was produced by the defendant from its files. It was either prepared on or about August 31, 1955 by or for W. D. Way, Jr., then a market [fol. 1269] analyst of the defendant. It was distributed to the addressee and to the persons named on page 2, each of whom was then an employee of defendant."

I would like to call attention to that, your Honor, because it seems to me that as we go along, even though we may have some objection to these documents, we have stipulated to certain facts with respect to them.

The Court: Yes.

Mr. Greenberg: If the Court please, on some of the previous exhibits we did not have identification of the positions.

The Court: But we have now on 614, as I see it, the distribution is to three of the individuals already covered.

Mr. Greenberg: Yes, that is right.

The Court: What previous exhibit did you have in mind?

Mr. Greenberg: 607.

The Court: I don't think there is anybody on there who has not previously been covered.

The Witness: That is the same distribution.

The Court: It is the same distribution.

[fol. 1270] The Witness: Yes.

Q. 605 is the next one.

A. That is practically the same.

The Court: That is practically the same distribution. At least, there are names omitted but the others are on there.

The Witness: Yes.

Q. Will you turn to 605?

The Court: The same applies to 605, as far as distribution is concerned.

Mr. Greenberg: All right.

Q. 610.

A. The same.

The Court: 610 has substantially the same distribution.

The Witness: The same.

The Court: 610 is signed by a gentleman named T. L. Sanders. Who is he?

The Witness: Well, T. L. Sanders was a member, I believe, of the commercial research department group reporting to Mr. Hill.

Q. 608?

A. That is substantially the same.

Q. 602?

[fol. 1271] A. Yes.

Q. Any additional ones?

A. This is a shorter list.

Q. 601 is the next one.

A. There is one addition, and that is Mr. Perin, R. L. Perin.

Q. Who is he?

A. He was the vice-president of the Eastern Division.

Q. 445, I think, is the next one.

A. I don't have that.

The Court: You have somebody named Hatfield on there.

The Witness: R. F. Hatfield became the general sales manager in place of Mr. Neuman, and then we had Mr. Carey. I believe Mr. Carey at that time was my assistant.

The Court: He was your assistant?

The Witness: Yes.

Mr. Greenberg: You may cross-examine or do what you like.

Mr. Hughes: Your Honor, I would like to make a preliminary objection on the ground that it appears now from [fol. 1272] the testimony apparently given by the witness that there is no proof of any circulation of any of these documents outside of the confines of the corporation.

The Court: What differences does that make?

Mr. Hughes: And no proof—

The Court: What is the significance of that? You have said that several times but I do not conceive that it is significant whether it was circulated within or circulated without.

Mr. Hughes: Your Honor, I do think that there is a considerable difference in testing whether the document constitutes an admission of a corporate defendant. We have some authorities on that, your Honor, which I would be very glad to show you, which, among other authorities, is Judge Wyzanski's opinion, to which your Honor alluded the other day, which draws a distinction between the circulation of a document inside and outside of the confines of a corporation, where it is being offered as a document in the nature of an admission.

And, of course, there is another line of cases which say that where a corporation is involved, in the absence of a showing that the corporation has adopted, or in some way [fol. 1273] has acted upon a document, if mere circulation was among corporate personnel, that it does not make that document or that it does not constitute an admission.

The Court: I think that may be so, and for that reason I will permit you to examine on the voir dire.

Mr. Hughes: Before I do that, your Honor, may I go back to Exhibit 417 as to which I made an objection, and I think I perhaps should have amplified that. That was the document that was prepared by Mr. Carey—

Mr. Greenberg: Which one is that?

Mr. Hughes: From C. H. Buckley to L. A. Carey, G-617. Upon its face it purports to be a report of a study which Mr. Carey made by going to certain soft drink bottlers and reporting back certain items on cost. It seems to me that that is the rankest sort of hearsay in the present context of this case, and it certainly—

The Court: It is much less rank because it comes from your files.

Mr. Hughes: I am prepared to recognize, your Honor, that as to the degree of hearsay and the question of ad-[fol. 1274] missibility, there may be a difference where you are dealing with a third party document than when you are dealing with a document of a party to the action, but it seems to me that when you get right down to the basis of admission, in nearly every case it will either be because it does come to an admission by a corporation or that it was a business record within the meaning of Section 1732.

The Court: I think, philosophically, Mr. Hughes, this goes back historically to the indicia of reliability, and that is the whole basis of the application of the hearsay rule. The hearsay rule has been greatly weakened, particularly in this court, there is no question about it.

Mr. Hughes: I hope not too much.

The Court: Well, perhaps not too much, but certainly, in my judgment, when you come a document which represents a study by an employee of a company, of a party, and the party in turn sends the document to its salesmen for information in connection with making sales, there is no reason in the world to exclude it.

Mr. Hughes: Well, your Honor—

The Court: On this one I will overrule you.

[fol. 1275]: Mr. Hughes: Well, I just want to perhaps point up the problem that I am dealing with by inquiring, as I understand it is proper to do in one of these complicated and protracted cases where you are dealing with documents, as to the purpose of such a document as this. What is it attempted to prove?

The Court: I think that is a proper request.

Mr. Hughes: What is it really expected to prove?

The Court: Let us take 617 as an example.

Mr. Greenberg: Obviously, your Honor, I have not had an opportunity to go through this one, but, however, if I merely focus my eye on the last page of this memorandum, which is entitled "Comparison of Costs, Bottles versus Cans for Soft Drinks," I think, your Honor, the Government will contend that this document is relevant to show that a can company considered the prices and the costs of competing.

containers and took those into account in dictating its sales policy.

Mr. Hughes: Well, your Honor, is that the purpose for which it is being offered, as evidence of that fact? For [fol. 1276] example, could that be offered as proof of the costs of certain undescribed beverage companies? They are not even described in the document. If it is offered for proof of any such facts, we are going to get into a tremendous problem.

The Court: As I understand it, this is not offered for the purpose of showing, for instance, the details contained in the last part, primarily. What it is offered for, I would suppose, was for the purpose of indicating certain data which the defendant had before it and which it used in its efforts to sell cans for soft drinks. If that is so, it seems to me that this may be relevant.

Mr. Hughes: Well, take the memorandum—

The Court: It may be relevant on the issue, for example, without in any way being determinative, of whether in fact cans and glass compete in the soft drink industry.

Mr. Hughes: Your Honor, let us take the next to the last paragraph on page 3 of the report itself, the sentence which reads:

"Such major plants as Nehi, Dr. Pepper, Cott, Mason, Hires and Graf have demonstrated the profit- [fol. 1277] ability of the can to their own satisfaction."

Now is this document being offered to prove that enormous generality? Is the Government, when it comes time to briefing this case, whether in this court or elsewhere, going to rely on this document to prove that these large beverage companies were satisfied in 1956 of the profitability of cans?

It seems to me that that is not the way to prove such an enormous series of facts as that, such an enormous conclusion of facts.

If it is taken in without some indication, we are confronted with the proposition that we have to run through all of these documents with a fine tooth comb—

The Court: Mr. Hughes, it certainly can be offered as proof of the fact that responsible people in Continental Can

told their salesmen this, and whatever limitations you may seek to place upon generalities or statements as general as these, this is certainly what Continental Can told their salesmen.

Mr. Hughes: It seems to me that all this amounts to is a statement by Mr. Carey to Mr. Buckley who in turn may have imparted the information to others that these major [fol. 1278], companies have demonstrated the profitability of the cans to their own satisfaction.

The Court: Mr. Hughes, you see, the difficulty of your position is that you are arguing against a memorandum circulated by your own company to its salesmen on which its salesmen purported to act.

Mr. Hughes: Well, your Honor, I go along with you up to the last part of your statement.

The Court: This was information which was designed to help them in selling cans, and this witness testified that they were trying to sell cans at this point for soft drinks.

No, I will overrule you, Mr. Hughes. If at any point during the discussions here, or at some stage you seek to limit in some way the applicability of the specific statements in this report, I will hear you on that question when it comes, but it is going to go in evidence in any event, but as to how limited the purpose will be, I will hear you on that.

[fol. 1279] Mr. Hughes: Well, do I understand then, your Honor, that the document is really being received for all purposes?

The Court: At this time it is being received for all purposes, subject to a motion to limit it.

Mr. Hughes: Well, your Honor, it seems to me that this does pose an enormous problem for us.

The Court: I am only ruling on 617 at the moment, mind you.

Mr. Hughes: Excuse me, your Honor.

Well, for the moment, your Honor, just so I am clear about this, because I do consider that this may have enormous significance to us later, this is taken really for proof of the fact that such a document containing such statements was circulated among the sales force of Continental Can Company.

The Court: That's right. Now, it may very well be that

the Government would ask me to draw an inference from that, that in so doing Continental vouched for the reliability of this report. But we will cross that bridge when we come to it.

Mr. Handler: You are not taking it in, Judge, to prove [fol. 1280] that it was proof of that ultimate fact.

The Court: No. At the moment I am taking it on the basis that this was what Continental told its salesmen.

Now, as to the accuracy of the statements that they told their salesmen, I think that the Government might ask me to draw the inference that in substance the defendant vouched for these statements by passing the information on to their salesmen in that document. But that is something that is a bridge we will cross when we get to it.

All right, Mr. Greenberg, or is Mr. Hughes about to go into the voir dire?

Mr. Hughes: We will turn to Exhibit 445, which I believe is the next in the order in which the documents were offered by the Government.

Mr. Greenberg: Your Honor, I think Mr. Hughes misunderstood something. We haven't offered 445 as yet.

The Court: Oh, haven't you?

Mr. Greenberg: No, your Honor.

The Court: Well, haven't you offered this batch of documents you just asked the witness about?

[fol. 1281] Mr. Greenberg: G-609-A, G-613 and G-617 were offered and admitted. The other documents, from 445 on, were documents which this witness received and he identified the recipients.

The Court: You are not offering them at this time.

Well, since they are not offering them at this time, then if you want to examine this witness about them, Mr. Hughes, you may.

Mr. Hughes: Well, I don't see any point in doing it until there is an offer.

The Court: Well, only this, that if this is part of the background on which Mr. Greenberg relies for a foundation, you may want to inquire into this portion of the foundation.

All right, Mr. Greenberg, I misunderstood you.

Mr. Hughes: Which was the first of those that has been marked?

The Court: Let's check off. We have got 617 in, 600-A in, and what is the other we have in?

Mr. Greenberg: 613, your Honor.

The Court: 613.

[fol. 1282] Mr. Hughes: Where are the other ones?

Mr. Greenberg: Then there is 445.

Mr. Hughes: All right, that is what I thought.

The Court: Then we start off with 445.

Mr. Hughes: That is what I thought, your Honor.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Buckley, did you prepare this document?

A. No, I didn't prepare it.

Q. Do you know anything whatever about the circumstances of its preparation?

A. No, I don't know the actual process of getting it prepared.

By the Court:

Q. Did you tell us who Mr. Walter Way was?

A. Yes, he was a member of either the Commercial Research Department or the Market Research Department, one or the other.

By Mr. Hughes:

Q. And he was not in your department; is that correct?

A. No.

[fol. 1283] Q. And you didn't direct or cause this document to be prepared; is that correct?

A. I played a part in asking that this be prepared, yes, but I didn't have anything to do with the actual preparation of it.

Q. And you know nothing of the circumstances of its preparation and what study or effort of any kind went into its preparation; is that correct?

A. That is correct.

Q. And do you know what circulation this document received?

A. Yes. That went to the salesmen, the district sales managers and the division sales managers.

Q. And did it go outside the company?

A. No, as far as I know, it didn't.

Q. Was its circulation within the company limited to those people whom you have just specified?

A. Yes.

Q. Do you know of any action that any one of them took on this document, or with respect to it?

A. No.

Mr. Hughes: Again, your Honor—

The Court: It hasn't been offered yet, Mr. Hughes.

[fol. 1284] Mr. Hughes: Oh.

The Court: So let's cross that bridge when we come to it. I presume there is going to be more testimony concerning it.

Mr. Greenberg: Yes, sir.

Mr. Hughes: You are right.

What is the next exhibit you offered?

Mr. Greenberg: 601, Mr. Hughes.

By Mr. Hughes:

Q. Document 601, Mr. Buckley, that was prepared by Mr. Walker?

A. Yes.

Q. And what was his position at the time?

A. He was the director of commercial research.

Q. And was he under your supervision and control?

A. Not under my direction and supervision, no.

Q. Do you know anything about the circumstances of his preparing this document?

A. I only know that he was asked to make this type of survey, that is all.

Q. Did you ask him to?

A. Well, I together with other people, yes.

[fol. 1285] Q. Who were the other people?

A. The general sales manager, and, well, I guess that is all. The general sales manager and his superior, Mr. Fisher.

Mr. Greenberg: Your Honor, may I just interrupt at this juncture?

You have the stipulation of the defendants before you, and before we came to court some time ago the Government analyzed these stipulations and they break down—oh, yes, stipulations and answers to a request to admit, which I don't think have been brought to your Honor's attention.

The Court: The stipulations with respect to documents are before me now, and I am following them.

Mr. Greenberg: Then there are defendant's answers to plaintiff's request to admit, which I do not know whether they have been filed or not, in which they, as to certain items, say that the document was prepared in the course of work or the course of employment.

Is that correct?

Mr. Hughes: That is correct.

The Court: Well, presumably there is no doubt about the fact that these documents were prepared in the course [fol. 1286] of employment. The testimony shows it.

Mr. Hughes: Yes. Well, we have stipulated with reference to a certain number of these documents that they were prepared in the course of the work of the author of the document.

Q. Mr. Buckley, did this memorandum have any circulation outside of the company?

A. None outside of the company.

Q. And do you know of any action of any kind taken by any officer or employee of the corporation, with reference to this document?

A. No.

The Court: Is this also distributed to salesmen, generally?

The Witness: General distribution, but mostly just to the divisional sales managers.

The Court: Divisional sales managers?

The Witness: It wasn't a product bulletin like the others.

Q. Now, I show you document G-602 for identification, and I ask you whether that had any circulation outside of the corporation?

A. No, no, it didn't.

[fol. 1287] Q. Do you know of any action taken on that document?

A. No.

Q. And in paragraph 1 on page 1 there is a reference to a resident field supervisor of A. J. Wood & Co.; do you see that reference?

A. Yes.

Q. Do you know anything about that survey, except as it is referred to in this memorandum?

A. Only as it is referred to in the memorandum.

Q. Do you recall ever having seen that survey by this resident field supervisor of A. J. Wood & Co.?

A. Yes.

Q. And did you have anything whatever to do with the devising or execution of that survey by A. J. Wood & Co.?

A. No.

Q. And you don't know how it was conducted or carried out, do you?

A. No.

Q. And do you have any recollection of the contents of that survey?

A. No.

Mr. Greenberg: Do you want the next number?
[fol. 1288] Mr. Hughes: Yes.

Mr. Greenberg: 608.

By the Court:

Q. Will you take a look at 608, Mr. Buckley, and see whether or not your answers with respect to the questions that Mr. Hughes just asked you about the previous document would be the same as to 608? Do you have 608? You may use my copy.

The Court: (To Mr. Hughes) You have heard my question, have you?

Mr. Hughes: Would you please repeat the question?

The Court: Yes.

(Question read.)

A. Yes, sir; I say that it would be essentially the same, except in the previous document the mention was made of A. J. Wood as the market research company getting the documentary information, and of course there is no mention of that here.

Q. No mention of Wood here.

A. Because they did not take part in this particular survey.

By Mr. Hughes:

Q. Does this purport to be nothing more than the observations of Mr. Hill on somebody else's survey; is that correct?

A. That's right; it was a telephone survey.

Q. Now, what was your official capacity at the time?

A. Products sales manager.

Q. Did you have any supervision or authority over the sales force?

A. No.

Q. Well, what would be the purpose of these documents, such as Exhibit G-608 for identification?

A. Well, the purpose of the document was to give us some idea as to whether or not canned soft drinks were penetrating into these three markets, and we wouldn't know unless this telephone survey were made.

Q. You were just passing on such information as you collected from these various random sources?

A. That's right.

Q. To people in the same organization itself?

A. Within the company; that's right.

Q. Just for the purpose of keeping them—

A. Advised.

Q. —currently informed of such information that you picked up?

[fol. 1290] A. Right.

Q. Is that correct?

A. Yes.

Q. Would that be true of all of these documents that we have thus far considered?

A. It would be true of most of the surveys.

Mr. Hughes: Well, now, it may expedite matters, your Honor—I believe the next group is a group of surveys, is it not? What are your next documents?

Mr. Greenberg: 601.

The Court: Better give your copy to the witness, Mr.

Greenberg, so that I have one and the witness has one, and you can look over Mr. Hughes' shoulder.

Mr. Greenberg: All right.

Q. Well, Mr. Buckley, you are mindful of his Honor's question with respect to Exhibit G-608, are you?

A. Yes.

Q. And I show you Exhibit G-610 and ask you if I put those questions to you in detail, would your answers be substantially the same?

A. Yes, they would.

Q. And if I may summarize it, this is a summary of [fol. 1291] Mr. Sanders of a survey made by other persons; is that correct?

A. That's right.

Q. With which you had nothing whatever to do?

A. Correct.

Mr. Greenberg: 604.

The Court: That leaves what, 614 and 615?

Mr. Greenberg: 604, 605, 607, 614, 615.

Q. Exhibit G-604 for identification, Mr. Buckley, have you got that in front of you?

A. Yes.

Q. Is that the same sort of summary of a survey by Mr. Walker, survey made by somebody else?

A. Yes.

Q. You didn't participate in its preparation?

A. No.

Q. And it wasn't circulated outside the company?

A. No.

Q. Did it serve the same purpose as these other surveys?

A. Yes.

Q. I show you Exhibit G-605 for identification. Again, is this Mr. Walker's summary and comment upon a survey made by others?

[fol. 1292] A. Yes.

Q. And these others were outsiders, is that it, that is, persons outside of the company?

A. Right.

Q. You had nothing to do with devising or executing the survey on which this purports to report?

A. No.

Q. Made for the same purpose?

A. Yes.

Q. Not circulated outside the company?

A. No.

Q. As far as you know. Any action taken on it, so far as you know?

A. No.

Q. I show you Exhibit G-607 for identification and ask you if this is the same sort of report on the same kind of survey?

A. Yes.

Q. With the same general purpose?

A. Yes.

The Court: And the same things can generally be said about it; is that right?

The Witness: That's right.

The Court: All right.

[fol. 1293] Q. I show you Exhibit G-614 and ask you if you identify that as the same kind of a report on the same kind of a survey?

A. Yes.

Q. And that was a survey made over the telephone?

A. Right. These were all telephone surveys.

Q. And for the same purpose?

A. Same purpose.

Q. And again not circulated outside the company?

A. No.

Q. No action taken on it, so far as you know?

A. No.

Q. Finally, Mr. Buckley, I show you Exhibit G-615, and ask you if this is the same sort of report on the same kind of a survey?

A. Yes.

Q. And if I were to interrogate you in detail, would your answers be the same as they have been to his Honor's previous questions?

A. Yes.

The Court: Now, is there anything further from this witness, gentlemen?

Mr. Greenberg: No, your Honor.

[fol. 1294] The Court: Have you, Mr. Hughes?

Q. Now, going back to Exhibit 600-A—

Mr. Hughes: 600-A is in evidence, is it?

Mr. Greenberg: Yes, it is.

Q. —that shows some pictures of some cap-sealed soft drink cans; do you see that?

A. Yes.

Q. Whatever happened to them?

A. Well, they were discontinued as not being acceptable in the industry, and they were really a failure.

Mr. Greenberg: Your Honor, we don't seek to prevent information of any kind coming out, but we are going beyond—

The Court: I quite realize that and I am perfectly prepared to permit Mr. Hughes to examine this witness concerning anything in any documents that have been admitted in evidence through his testimony.

Mr. Greenberg: Right,

The Court: You say these three cans were failures?

The Witness: Yes, sir.

The Court: All right, anything further?

Mr. Hughes: Just one moment, your Honor. These documents [fol. 1295] are going a little slower.

Q. Now, Mr. Buckley, I refer again to Exhibit G-617 in evidence, and to the first page and to the second paragraph, in which you say in part, "We have analyzed operation where the can has been added successfully as a supplementary package to a bottle line with good consumer acceptance."

The Court: Where is that, Mr. Hughes?

Mr. Hughes: In the second paragraph of the first page.

The Court: The first page, yes.

Mr. Hughes: I didn't read the entire text.

The Court: That is all right. I have it.

Q. Will you tell us what you meant when you used that term "supplementary package," Mr. Buckley?

A. Well, we were constantly trying to show the idea that a soft drink bottler could use a can as another package in order to sell his product without affecting the sales volume that he had in just bottles, which was the very conventional

package at the time, and this together with other bulletins always emphasized the fact that this new type of container would not take away from the sales volume in his returnable or one-way bottles.

[fol. 1296] Q. In his regular bottle line?

A. That's right.

Q. In other words, that it would be in the nature of plus business, so to speak?

A. That's right.

Q. And was that the way you felt about it at the time?

A. That is the way I felt about it, and it is the way the company felt about it.

Mr. Hughes: That is all, your Honor.

The Court: All right, anything further, Mr. Greenberg?

Mr. Greenberg: I just wanted to point out for the record—and I don't wish to protract this any more than it has been—that this was their sales pitch.

The Court: No, no, Mr. Greenberg, No, no.

Mr. Greenberg: Your Honor, I make the statement only because Mr. Hughes has gone beyond voir dire and was getting into—

Mr. Hughes: Now wait a minute.

The Court: No, he hasn't gone beyond voir dire. This is a witness who sponsored the document. He can ask him any questions in the world about a document he sponsored, [fol. 1297] Mr. Greenberg. He is not going beyond anything.

Mr. Hughes: And the document is in evidence anyway.

The Court: It is in evidence anyway. When you have a fellow who prepared a document, or under whose supervision it came, and he is on the stand, you can ask him anything in the world about that document, let there be no doubt about that. We are not talking about a voir dire or anything else. At least that is my understanding of the law.

Thank you, Mr. Buckley, you may step down, sir.

(Witness excused.)

The Court: We will take a brief recess at this point.

(Short recess.)

The Court: All*right, let's have the next witness, gentlemen.

Mr. Hughes: Your Honor, there are a few questions that I wanted to ask Mr. Buckley, that I overlooked asking about these documents. It will take just a couple of minutes.

The Court: Will you resume the stand, Mr. Buckley, [fol. 1298] please.

CHRISTOPHER H. BUCKLEY, resumed.

By Mr. Hughes:

Q. Mr. Buckley, referring to the various documents that were marked for identification and in evidence during the course of your testimony, were these documents, from your standpoint, in the nature of sales promotional material which you sent to the sales department in an attempt to generate interest in the can as a soft drink medium? Was that the idea of it?

A. Yes, it was a promotion piece.

By the Court:

Q. Well, now, wait a minute, before we leave. Just what do you mean by a promotion piece? Do you mean that in those documents you were engaging in puffing, or were you attempting to give the salesmen what you conceived to be facts on which to operate?

A. Well, they were documents that were sent out, your Honor, to stimulate the salesmen, and there were some general statements made.

Q. You think you were drawing a long bow in those documents?

A. Well, I'd say in some cases I was, and I think that [fol. 1298a] if I were put in a position where the management of the company had to make a decision on, say, heavy capital investment for a new can line or a new plant, I might not have been so—

Q. Enthusiastic?

A. —enthusiastic. It was mostly a promotion item.

[fol. 1299] Q. Do I understand that was to stimulate your own sales department, is that right?

A. That is right.

Mr. Hughes: That is all.

Mr. Greenberg: Your Honor, we are not going to ask the question any further questions at this juncture because we feel that the documents speak for themselves and reflect the true intent and purpose of this corporation during this period.

The Court: Let us not be under any delusions that this reflects the true intent and purpose of any corporation. This document may be relevant as indicating certain things, but I am not going to hold that this document represents the true intent and purpose of the corporate defendant.

Is there anything further from Mr. Buckley?

(No response.)

The Court: All right, you may be excused.

(Witness excused.)

Mr. McManus: The Government calls Mr. Dukehart.

The Court: And, moreover, Mr. Greenberg, I think you should bear in mind that primarily you are offering these documents as admissions, and once you have any written [fol. 1390] admission or otherwise it is always subject to explanation by the defendant or by a party.

All right, gentlemen, will you pay attention to the swearing of this witness.

MORTON DUKEHART, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. What is your present position, Mr. Dukehart?

A. I am manager of can sales for Crown Cork & Seal Corporation, Philadelphia.

Q. Were you formerly employed by Continental Can Company?

A. Yes, I was.

Q. For what period of time?

A. From about 1936 to June 1, 1956.

Q. During the period of 1948 to 1952 could you tell me what your position was with Continental Can?

A. I was a products sales manager in charge of the soft-drink and beer cans, essentially the same as Mr. Buckley's job. In fact, Mr. Buckley was my successor.

[fol. 1301] Q. Were your duties the same as Mr. Buckley's?

A. With the exception that his duties were added to and included soft drink cans which had not been invented when I had been there.

Q. I would like to show you Government's Exhibit 439. Did you prepare that document, Mr. Dukehart?

A. I wrote the accompanying letter but I did not prepare the document.

Q. But the attachments went out with the letter?

A. That's right, as an attachment.

Q. And it was sent to all of the district sales managers?

A. Yes.

Q. And was it sent to the people here under "c.c."?

A. Yes, that is right.

Mr. McManus: Your Honor, do you want him to explain who these people are?

The Court: No, I think we have the same group here, do we not?

Mr. McManus: They are generally the same.

The Court: Generally they are the same group, is that [fol. 1302] correct?

The Witness: The jobs were essentially the same but the names are different because of promotions within the company.

The Court: I see.

Q. What was the purpose of sending out this document?

A. It was to disseminate information to the field sales force.

The Court: How many documents are you going to ask Mr. Dukehart about?

Mr. McManus: I am going to offer this one in evidence, your Honor. I have four more to ask him about for background information.

The Court: But you are not going to offer those?

Mr. McManus: No, sir.

The Court: Then, Mr. Hughes, you may examine about this one.

Preliminary Cross-examination:

By Mr. Hughes:

Q. Mr. Dukehart, do you know from what sources the information contained in these three sheets attached to your letter constituting part of Exhibit G-439 were assembled? [fol. 1303] A. No, they were assembled by the commercial research department, but I don't know the sources.

Q. You haven't the faintest idea of the accuracy or inaccuracy of any of that data, is that correct?

A. That is correct.

Q. And did this document have any circulation outside of the company?

A. No.

Q. Do you know of any action that was taken by any of your corporate officers or any responsible employee of the company in connection with this document?

A. No.

Q. Were you here when Mr. Buckley testified?

A. Yes I was.

Q. Would you say that this document was in the nature of promotional material from your department to the sales department?

A. The purpose of the letter was the same as that described by Mr. Buckley.

The Court: Do you think that you two were puppets?

The Witness: Again I would have to say that this was [fol. 1304] information used as a stimulant to our field sales department and they would have had to have more authority to warrant expenditure of any large amounts of money within the company.

Q. You would not recommend building factories in this manner, would you?

A. No.

Mr. Hughes: Your Honor, I object to it.

The Court: Overruled.

(Government's Exhibit 439 for identification received in evidence.)

Q. I show you Government's Exhibit 440; do you recognize that document?

A. Yes, I do.

The Court: Can't we take these in numerical order?

I have the list which you have given me which refers to 439, 440-A, 441 and 600. Can't you take 439-A next?

Mr. McManus: Your Honor, this witness is not concerned with 439-A.

The Court: He is not concerned with 439-A?

Mr. McManus: No, sir.

The Court: All right, we will strike that off this list.

[fol. 1305] Mr. McManus: I do want to apologize to the Court.

440-A should be the next one.

The Court: All right.

By Mr. McManus:

Q. Will you take a look at that document?

The Court: 440 or 440-A?

Mr. McManus: 440-A is the first one.

The Court: I don't have any 440-A.

Mr. McManus: It is in front of 440.

The Court: Is that called "non-returnable beer bottles"?

Mr. McManus: It is "The future of canned beer," dated January 29, 1952.

The Court: Yes.

Q. Would you look at that document and tell me if you recognize it?

A. Yes, I do.

Q. Did you receive that document?

A. Yes, sir.

Q. Do you recognize the party that wrote the document?
[fol. 1306] A. Yes.

The Court: Who did write it?

The Witness: It was written by Mr. D. H. Walker.

The Court: That is the same Mr. Walker that was referred to before?

The Witness: Yes, that is correct.

The Court: That Mr. Buckley mentioned?

The Witness: Yes.

Q. Do you recognize these gentlemen to which carbons were sent?

A. Yes.

Q. Could you tell us who they are? I don't believe that they have previously been identified.

A. At the time Mr. Dake, I believe, was director of the commercial research department. Mr. Neuman was—I don't remember that exactly—Mr. Neuman, I think, was in charge of the products group, and other than that I cannot identify him.

Mr. Cameron was the general manager of the central division. Mr. Gill was one of his assistants. Mr. Fenn was one of Mr. Cameron's assistants. And Mr. Westerback was the district sales manager at St. Louis.

[fol. 1307] Q. When you received this document what did you do with it?

A. I stored it away with other similar information which would be used when necessary in discussing problems with the sales department.

Q. You would take this information and you would discuss it with your field sales departments?

A. Yes, that is right.

Q. Going to Government's Exhibit 440 do you recognize that document?

A. Yes, I do.

Q. The same Mr. Walker wrote that document?

A. That is right.

Q. And what was his position again?

A. I believe at that time he was director of commercial research.

Q. And when you received this document to what use did you put it?

A. Again it was used along with other similar documents to provide general information concerning the products for which I was responsible for disseminating information to the field sales departments.

Q. And you would use the information here to disseminate to your sales departments?

[fol. 1308] A. That's right.

Q. Going now to document 441, do you recognize that document?

A. Yes, sir.

The Court: If the same questions were asked of you with respect to document 441 as have been asked with respect to the previous documents, would your answers be the same?

The Witness: Yes, they would.

The Court: All right.

Mr. McManus: I only have one more document to ask this witness about, and that is 600-B.

Q. I show you document 600-B, Mr. Dukehart. The same Mr. D. H. Walker prepared that document?

A. That's right.

Q. And you received that document?

A. Yes.

Q. And this document did not relate to beer, did it?
[fol. 1309] A. This was a preliminary investigation of the potential market for soft drink cans.

Q. And when you received this information did you use it in the same way that you used the other information that you testified about?

A. Yes.

Q. You would disseminate this information—

A. And probably use it in connection with other similar information to accumulate knowledge of the potential market for the sale of our products.

Q. That being soft drinks?

A. That is correct.

Q. And you would again disseminate that to the sales personnel of Continental Can?

A. That is right.

Mr. Hughes: Are these documents being offered?

Mr. McManus: No, just the one that I have offered.

Mr. Hughes: Well, then I do not want—

Mr. McManus: Yes, they are going to be offered.

The Court: They are going to be offered eventually, as I understand it, is that right?

[fol. 1310] Mr. McManus: That is right. That is all I have.

Cross-examination.

By Mr. Hughes:

Q. Mr. Dukehart, was Exhibit 440-A for identification circulated outside of the corporation?

A. No.

Q. As far as you know?

A. No.

Q. Do you know of any corporate actions of any kind that were taken on the basis of that document?

A. No.

Q. There is a reference in this document to a Mr. Dake. Can you tell us who he was?

A. He was Mr. Walker's superior at the time.

Q. Was Mr. Walker in your department at that time?

A. No.

Q. What was his position at that time?

A. Mr. Walker at that time was in the commercial research department. I am not sure what his title was at that time, but his job was to provide information of this kind to me and to others in similar jobs under the direction of Mr. Dake.

Q. And this makes reference to a "summary of discussions we have had." Do you see that reference?

[fol. 1311] A. Yes, I do.

Q. You did not participate in those discussions yourself, did you?

A. No, they were probably discussions between Mr. Walker and Mr. Dake.

Q. This document was not circulated to the sales managers or any people in the sales department, was it?

A. May I see it?

Mr. McManus: Which one is that?

Mr. Hughes: The same one.

A. No, this was to a selected few who were more interested in the sale of beer cans than others.

Q. I show you Exhibit 440 for identification and ask you

whether Mr. Walker held the same position at the time when this memorandum was prepared?

A. That is right.

The Court: If the same questions were asked with respect to the document under discussion as were asked with respect to 440-A, would your answers be the same?

The Witness: Yes, they would.

Q. This document refers to an attached report, and you will observe that there is an attached report?

A. Yes.

[fol. 1312] Q. Did you have anything to do with the preparation of that report?

A. Nothing.

Q. And you don't know anything about the circumstances of its preparation?

A. No.

Q. Or what the sources of the information were?

A. No, they were general sources gathered by the department in their normal course of operation.

Q. Gathered here and there from some random sources, is that correct?

A. Yes.

The Court: I thought you said you didn't know where they got that information from, Mr. Witness?

The Witness: Well, I would say that again, sir.

The Court: In other words, you just don't know where they got the information?

The Witness: No, Sir.

The Court: You don't know what was from random sources or what was not, do you?

The Witness: No, I do not.

The Court: All right.

Q. I show you Exhibit 441 for identification—

[fol. 1313] The Court: I am sorry, Mr. Hughes, to interrupt you, but how much longer are you going to be with this witness?

Mr. Hughes: I have just one or two more documents.

The Court: Because I have some other people waiting

for a hearing, but if you are going to be just a couple of minutes, you may go ahead.

Mr. Hughes: I will move along quickly, your Honor.

The Court: All right.

Q. Did this receive any circulation outside of the company, so far as you know?

A. No.

Q. Did you have anything to do with the compilation of any of the factual data that purport to be recorded in this document?

A. No.

Q. And did this go to the sales force generally?

A. Yes, it did.

Q. It was not circulated outside the company?

A. No.

Q. Do you know of any corporate action taken upon this document?

[fol. 1314] A. No.

Q. There is one more—

The Court: Yes, 600 B.

Q. I show you document 600-B, and I ask you whether this document received any circulation outside of the corporation?

A. None.

Q. And was this circulated to the sales force generally?

A. Yes.

Q. Do you know of any corporate actions taken upon this document?

A. No, sir.

Q. Did you have anything to do with the assembling of the data that purport to be reflected in this document?

A. No, I did not.

Mr. Hughes: That is all, your Honor.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, your Honor. We have two witnesses, I believe, that are still here and we would like to continue tomorrow with them with some other documentary testimony. I will ask them to come back at 2 o'clock tomorrow.

The Court: Who are those gentlemen?

[fols. 1315-1317] Mr. McManus: Mr. Green and Mr. Frame.

The Court: Are those two gentlemen here? Is Mr. Green here and Mr. Frame?

Mr. Frame: Yes, sir.

The Court: Mr. Frame, will you attend here tomorrow at 2 o'clock, please.

Mr. McManus: That is all.

Mr. Johnson: Your Honor, we were given a list of persons to be called for tomorrow after we came in to court today, and I am informed that two of those individuals are out of town and as of now they apparently have not as yet been notified that they were to be called. At least, the company has not been able to get in touch with them.

The Court: Are those employees of yours?

Mr. Johnson: Yes. We have received no further information as to whether they have gotten in touch with them.

The Court: In other words, you have done your best to get in touch with them and you have been unable to do so?

Mr. Johnson: That is right, your Honor.

The Court: You may step down, thank you.

(Witness excused.)

[fol. 1318] FRANK A. VICKERY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Were do you reside, sir?

[fol. 1319] A. In West Hartford, Connecticut.

Mr. Greenberg: Will you mark these for identification while I continue with the examination.

Q. What is your present employment?

A. I am employed with Emhart Manufacturing Company.

Q. How long have you been with the company?

A. Since 1956, June.

Q. What is your position with the company?

A. I am now administrative sales manager.

Q. What work do you do in connection with sales?

A. The work I do is internal administration of the sales department operations, liaison with engineering departments and with production departments in the company.

Q. Mr. Vickery, I show you Government's Exhibit 363 which has been marked for identification and I ask you if you recognize it?

A. Yes, I do.

Q. And what is it, sir?

A. This is a recording of Continental Can's Hazel-Atlas Division by plant and serial number of IS machines as of July 31, 1958.

Q. Sir, do you know—

[fol. 1320] The Court: It is a record of your machines in the plants of Continental Can?

The Witness: Yes, sir.

Q. Do you know how it was compiled?

A. This was taken from company records, our company records.

Q. Did you supervise the compilation of this document?

A. I did.

Q. How did you go about compiling this document?

A. By a review of our plant records showing machines shipped.

Q. What type of records were those?

A. We record for identification by serial number each piece of our equipment, and these records were reviewed.

Q. How far back in time did you go?

A. 1935, as I recall.

Q. Are these the routine business records of your company, would you say?

A. Yes, they are.

Mr. Greenberg: Your Honor, I offer this exhibit into evidence.

Mr. Johnson: No objection.

[fol. 1321] The Court: It may be received.

(Government's Exhibit 363 for identification received in evidence.)

The Court: So that this is clear to me, Mr. Vickery, this is really a record of shipments to particular plants, is that correct?

The Witness: Yes, your Honor.

The Court: If you ship one of your machines to the plant of a customer, is it your practice to help in the installation of that machine?

The Witness: If so requested by the customer.

The Court: If requested by the customer?

The Witness: Yes, your Honor.

The Court: You do not know whether that practice was followed with Continental Can or not?

The Witness: In some cases it was.

The Court: What I am getting at is, if this exhibit purports to be shipments of machines to these various locations, it does not necessarily follow from this that the machines are presently in those locations?

The Witness: No, it does not.

[fol. 1322] The Court: Very good.

Mr. Greenberg: Your Honor, since the exhibit is in evidence I would like to direct your attention, before the inception of my examination as to this document, to the section or the column which is entitled "Purchase Authorized By."

The Court: Yes.

Mr. Greenberg: And underneath that column there is designated or that column describes the particular company which acquired the machine, which in this case is Hazel-Atlas—

Mr. Johnson: Your Honor, I believe that the witness should be asked to describe what that column means.

The Court: I think so, too. I see the notation in the column but as to the significance of that, let the witness testify.

[fol. 1323]. Mr. Greenberg: May I have the documents, your Honor? I will show them to the witness.

By Mr. Greenberg:

Q. I direct your attention to the column which is entitled "Purchase Authorized By." Now, what does that mean?

A. This column was compiled by examining purchase orders received by us.

Q. There are references to Hazel-Atlas in this column; is that correct, sir?

A. Yes, there are.

Q. Is that reference to Hazel-Atlas Company prior to 1956, or, prior to the acquisition by Continental Can of the Hazel-Atlas Division?

Mr. Johnson: I will object to that.

The Court: No, no. I will sustain an objection to that.

By the Court:

Q. What is the source of the words "Hazel-Atlas" placed on that document?

A. The Hazel Atlas purchase order was issued.

Q. And what do you mean by a "Hazel-Atlas purchase order"?

A. Hazel-Atlas Glass Company, prior to acquisition.

[fol. 1324] Q. In other words, the order form from which you took that information contained the legend "Hazel-Atlas Glass Company"; is that correct?

A. Yes, your Honor.

Q. And with respect to Continental Can, the order form from which you compiled that information contained the legend "Continental Can Company"?

A. Yes, your Honor.

Q. And you are not trying to draw from those legends any legal conclusions. All you are trying to say is that is what the purchase orders said, period.

A. Yes, your Honor.

Q. All right. Were there any purchase orders, as you recall it, entitled "Continental Can Company—Hazel-Atlas Division"?

A. Yes, your Honor.

Q. How were those listed?

A. As Continental Can.

The Court: As Continental Can.

By Mr. Greenberg:

Q. Sir, I direct your attention now to the part of the document, the columns in the document, which deal with the number of sections of the machine and the equipment ordered with the machine, that is the last column, and ask [fol. 1325] you how they were compiled?

A. Again, from our records, as previously described.

Q. Sir, referring now to the last column, which indicates what the machines ordered were, it lists the 62 single gob, and so on and so forth, will you tell us what each of those items are?

A. Yes. 62 single gob is a machine for wide mouth single gob operation.

62 double gob is a machine equipped for double gob wide mouth operation. Blow and blow single gob is a machine equipped for narrow neck single gob operation. Blow and blow double gob is a machine equipped for narrow neck double gob operation.

The Court: All of those machines listed in that exhibit are machines for making glass containers, are they?

The Witness: Yes, your Honor, they are.

Q. Sir, all of the machines which are listed on this exhibit, referring to all the machines which are listed on this exhibit, can you tell us, sir, whether all of them are convertible either to wide mouth or narrow neck containers?

A. They are, with the addition of attachments.

[fol. 1326] Q. What kind of attachments?

A. If a machine is equipped for 62 single gob, an attachment can be put on the machine to make 62 double gob.

Q. Now, sir, what is the cost of an attachment at the present time?

A. The attachments run variously from approximately \$8,000 for a six-section machine to as much as \$30,000 for full equipment.

The Court: When you say "the attachments," you mean the converting attachments?

The Witness: Yes, your Honor.

Q. Sir, what is the cost of these machines at the present time?

Mr. Johnson: I object to that. I don't understand what he means by "these machines."

The Court: Well, plainly, the witness will have to specify prices of individual machines.

Can you do that for us?

Mr. Greenberg: Do I understand, your Honor, that we go back to 1935 and try to put a cost estimate on it?

The Court: Let me see this.

Well, the question is, are you talking about original [fol. 1327] selling price or present cost of this type of machine?

Mr. Greenberg: I referred, your Honor, I thought I referred in the question to cost at the present time. I realize it is quite a burden to have the witness go back in time and try to place an estimate on original cost.

The Court: That isn't the basis, I think, of Mr. Johnson's objection. Mr. Johnson merely wanted not a generalization but a statement of what prices apply to which machine.

Is that correct?

Mr. Johnson: That is correct.

Mr. Greenberg: All right.

Q. You have been with the company since 1956? Is that correct, sir?

A. That is correct.

Q. And have you become familiar with the prices for the—

The Court: All right, we will assume he is familiar with the prices.

Mr. Greenberg: All right.

Q. Now, for machines which have been sold since 1956 and which are described on this list, will you tell us the [fol. 1328] cost of each of those machines?

The Court: As of now or—

Mr. Greenberg: After.

Q. From 1956 to the present, when they are ordered?

The Witness: This is a rather broad request, your Honor.

The Court: Yes, I can understand that.

By the Court:

Q. Have you any data to which you can refer?

A. We could research our files.

Q. Well, suppose you tell us what they cost at the present time? Can you do that?

A. Yes.

Q. The machines of the various types?

A. Various machine types were run from \$75,000 to \$110,000, depending on the scope of the specification.

By Mr. Greenberg:

Q. Sir, can each of these machines with attachments make a full line of food and non-food containers?

Mr. Johnson: I object to this.

Mr. Greenberg: I am referring to the machines on the exhibit.

The Court: You mean glass containers?

[fol. 1329] Mr. Johnson: I object to the form of that question. I don't understand the use of the words "full line of containers."

By the Court:

Q. Well, let's understand one another here.

Mr. Witness, could one of these machines make a five-gallon glass jug?

A. No, your Honor.

The Court: All right.

By Mr. Greenberg:

Q. Referring now to glass containers other than a five-gallon glass jug, will you tell me, sir, whether each of these machines with attachments can make a broad range of food and non-food glass containers?

Mr. Johnson: I will object to that.

The Court: I will allow that, Mr. Johnson. I think we know pretty well we are talking about the ordinary open mouth and narrow neck glass containers.

Do you understand what I mean by that?

The Witness: Yes, your Honor.

The Court: Very well.

A. These machines are capable with attachments of making ware from fractional ounces to gallons.

Q. Sir, from your experience with Emhart, do you know [fol. 1330] whether machines of this type have been converted?

A. I don't quite understand the question.

The Court: Well, we all know that.

Mr. Greenberg: It has been in the record, your Honor?

The Court: There has been evidence ad nauseam that machines of this type can be converted and were converted in a number of plants.

Mr. Greenberg: Very well, your Honor.

The Court: Whether they were here or not, I don't know. If you want to introduce that evidence, all right.

Q. Mr. Vickery, I show you Government's Exhibit 185, which has been marked for identification, and ask you if you can identify it?

A. Yes, I can.

Q. Will you tell us what it is?

A. This is an advertising sales brochure for the IS glass-forming machine.

Q. Do you know how it was compiled?

A. Yes.

Q. How was it compiled?

A. From various company records and the experience [fol. 1331] of our people in manufacturing and operating the machinery.

Q. And do you know what use and distribution was made of this exhibit?

A. Yes. It is used presently and has been as a piece of advertising literature, distributed widely.

Mr. Greenberg: I offer this exhibit into evidence.

Mr. Johnson: I object to it as irrelevant.

The Court: Overruled.

(Government's Exhibit 185 received in evidence.)

Mr. Greenberg: You may cross-examine.

The Court: Have you a copy of the exhibit that you put in with this witness for me?

Mr. Greenberg: Yes, your Honor. You may use this copy.

I would like the record to show that the defendants were also supplied with a copy of this exhibit.

I assume they were.

All right, Mr. Johnson.

[fol. 1332] Cross-examination.

By Mr. Johnson:

Q. Mr. Vickery, do you know the date on which Hazel-Atlas Glass Company agreed to sell its assets to Continental Can Company?

A. No, I don't personally recall that.

Q. The IS machines, if I may say, are now regarded as one of the best container forming machines on the market, are they not?

A. Yes, they are.

The Court: You expect a "Yes" to that question.

Mr. Johnson: I did.

Q. Have they been improved considerably over the years?

A. Yes, they have.

Q. Is a machine that was made after 1950 a better machine than one that was made during the 40's?

A. Well, that is a rather hard question to answer.

Mr. Greenberg: Your Honor, may we have a foundation for that? He began with the company in 1956.

The Court: He is your witness. You have taken him through company records back to 1937 or '38 and—

[fol. 1333] Mr. Greenberg: Just the statistical records.

The Court: —and presumably he is, in the course of his duties, familiar with—

By the Court:

Q. Are you generally familiar with the types of machines produced prior to your employment?

A. Yes, I am, generally, your Honor.

Q. In the course of your duties did you make yourself familiar with the previous products of the company?

A. Yes, your Honor.

The Court: Very good.

You know, Mr. Greenberg, I am going to tell you something. When you have a fellow in a business position of this nature, I am perfectly willing if you want to have all kinds of technical foundations laid, but I assure you that these technical foundations are in nine cases out of ten simply an enormous waste of time.

Go ahead, Mr. Johnson.

By Mr. Johnson:

Q. Let me ask you this, sir:

Will you describe some of the improvements in IS machines [fol. 1333a] that have been made since 1950?

A. There have been many minor improvements made in material and improvements made to the attachments to make them more operable and more effective in operation.

[fol. 1334] The Court: Has there been any radical change in design?

The Witness: No, your Honor.

The Court: There has not?

The Witness: No.

The Court: It is the same basic machine with improvements in material and the matters you have just described?

The Witness: Yes, your Honor.

By Mr. Johnson:

Q. Is the changed equipment that is now used substantially different from the attachments that were used before 1950?

A. Not substantially different.

Q. There are some changes?

A. Minor changes, yes.

Q. Do they make changes faster?

A. I don't get that.

Q. Do they make it possible to make changes faster in the types of ware?

A. Changes in processes?

Q. Changes from one type of ware to another?

A. No.

Q. They do not make it faster?

[fol. 1335] A. No.

Q. When did the first six-section IS come out?

A. I believe in 1954.

Q. Is the six-section IS regarded as a more efficient machine than the four-section which was made before 1940?

A. It is a larger machine by two sections.

Q. You would not say that it was more efficient or less efficient?

A. Well, with more sections, with six sections—you are speaking now of productivity, I gather?

Q. Yes.

A. A six-section machine is more productive than the four-section machine.

Mr. Johnson: I should like to have marked for identification a copy of a letter from Emhart Manufacturing Company dated October 21, 1958, addressed to the United States Department of Justice, with the list referred to therein, but it does not attach to it the printed material referred to in the body of the letter.

This document is numbered 164-B in your Honor's documents.

[fol. 1336] Mr. Greenberg: Your Honor, may we look at this document to see what parts Mr. Johnson is using?

The Court: Has it been marked for identification before?

Mr. Johnson: Yes, it was marked.

The Court: You undoubtedly have it in your file then.

Mr. Greenberg: Yes, but I would want to see what part he was using and what part he was not.

The Court: You may look at it.

(Marked Defendants' Exhibit K for identification.)

The Court: Let me have this document.

Mr. Greenberg: Your Honor, we have not marked this exhibit Mr. Johnson refers to in your exhibit book.

The Court: All right.

Mr. Greenberg: I want to point that out for the record.
The Court: Very good. Somebody marked it for identification. Who did that, Mr. Johnson?

Mr. Johnson: Yes.

[fol. 1337] The Witness: Your Honor, may I ask a question in connection with this list?

The Court: The list in evidence?

The Witness: Yes—not that list, your Honor—the attachments to the October, 1958, letter.

The Court: Have you seen those?

The Witness: I have a recollection of that.

The Court: He is about to show them to you.

The Witness: Oh.

Q. Have you seen that letter before, Mr. Vickery?

A. Yes, I have.

The Court: Wait a minute. Before we go any farther, I am going to ask that somebody here find 164-A, which I do not seem to have.

Mr. Johnson: I referred to the office records, your Honor, not to the exhibit book.

The Court: Oh, I see. 164 seems to be minutes.

(Documents handed to Court.)

The Court: I am sorry, Mr. Johnson, is that the December 31st letter addressed to your firm?

Mr. Johnson: That is a copy of the transmittal letter from the Department of Justice to me. The letter which I [fol. 1338]. am referring to is immediately under that.

The Court: I have it now.

Q. This material was prepared by Emhart Manufacturing Company, was it not?

A. That is right.

Mr. Greenberg: I did not hear the question.

Q. This letter was prepared by Emhart Manufacturing Company?

A. Yes, it was.

Q. And it was prepared from its files and records?

A. Routine records, yes.

The Witness: In connection with this, your Honor, I

would like to make a request. This listing is quite comprehensive, and I feel somewhat in the area of trade secrets, and if it would be possible not to make this public information I would very much appreciate it.

The Court: Well, we have no intention, I think, of having it go beyond counsel and the Court at this stage.

The Witness: I see.

The Court: And, in fact, I will so direct with respect to this exhibit.

[fol. 1339] Mr. Greenberg: Your Honor, we wish to state at this juncture that the Government stipulates to the admissibility of that document.

The Court: You stipulate to its admission?

Mr. Greenberg: Yes, and therefore we can avoid the necessity of examination of it.

The Court: All right.

Mr. Johnson: In connection with your Honor's statement, I do want to point out that this material has been made available to us and has been available to us for some time, and has been available to the defendant heretofore in connection with trial preparation.

The Court: Let us put it this way: that the distribution that has been had of the document up to now shall not be extended.

The Witness: I appreciate that.

The Court: Very good. I can see why you make that request.

(Defendants' Exhibit K for identification received in evidence.)

Mr. Johnson: I am sorry, I am not offering the whole document.

[fol. 1340] The Court: You are not offering the whole document?

Mr. Johnson: I am offering the letter dated October 21, 1958, from Emhart to the United States Department of Justice.

The Court: Consisting of six pages?

Mr. Johnson: Consisting of six pages, yes, sir.

The Court: Yes.

Mr. Johnson: Together with four lists, three of which

are the lists referred to in paragraph No. 1 of the letter and described as follows:

Under the heading "IS Machines, List By Plants Showing Serial Number, Date of Shipment, and Number of Sections."

Under the heading "28 Machines, List By Plants Showing Serial Number and Date of Shipment."

Under the heading "65 Machines, List By Plants Showing Serial Number, Date of Shipment and Number of Sections."

The fourth list is a list described under paragraph 3 on page 3 of the letter under the heading "Other Companies' Machines," and described as follows, "A list of Such Machines Showing Characteristics Is Enclosed."

[fol. 1341] Mr. Greenberg: Your Honor—

The Court: Yes, Mr. Greenberg?

Mr. Greenberg: The Government would like to offer the rest of the document. It is one document, your Honor, and the defendant offered part, and we offer the rest of it.

The Court: Have you any objection to the rest?

Mr. Johnson: No objection.

The Court: All right, it may be received. The portions offered by the defendant have been noted and the balance will be considered as portions offered and received on behalf of the Government.

Mr. Greenberg: And, your Honor, the Government assumes that that will likewise be covered by the confidentiality agreement.

The Court: Yes, my direction with respect to confidentiality covers the document as a whole.

The portion marked by the Government, I think, Mr. Clerk, that you better arrange with counsel, so that the record may be clear, at the end of the session that Defendants' Exhibit K refers to the letter, and the three sections referred to by Mr. Johnson, and then give the balance of it an exhibit number for the Government.

[fol. 1342] (Marked Government's Exhibit 364 in evidence.)

Q. Mr. Vickery, are you familiar with glass container forming machines manufactured by companies other than Emhart Manufacturing Company?

A. I am not personally familiar with them.

Q. Have you any familiarity with them at all?

A. Not physical familiarity, verbal.

Q. You could not describe their operation?

A. No, not in detail.

Q. You have never seen one operate?

A. Yes, I have.

Q. Do you know what a Lynch machine is?

A. Yes, I do.

Q. What is a Lynch machine?

A. It is a rotary forming machine for glass containers.

Q. What kind of ware, what kind of glass containers?

A. Lynch machines can manufacture narrow-neck—certain types can manufacture narrow-neck and certain other types wide-mouth.

Q. When you say that, which types can manufacture [fol. 1343] each?

A. I don't recall the particular numbers. That is described in one of the exhibits, if I might refresh my memory.

Q. How about a Lynch 10, what will that make?

A. A Lynch 10, as I recall it, is a narrow-neck manufacturing machine.

Q. Will it make anything except narrow-neck glass containers?

A. I am not familiar with that.

Q. You just don't know?

A. No.

Q. And if I asked you about other Lynch machines would your answer be the same?

A. Yes, it would.

Q. And that is the extent of your familiarity with the Lynch machines, is that right?

A. Yes.

Q. Do you know what a Miller machine is?

A. Only by description of them. I have never seen them.

Q. You have never seen one?

A. No, I have not.

Q. Do you sell Hartford IS machines?

[fel. 1344] A. Do I personally sell them?

Q. Do you either sell them personally or supervise your salesmen?

A. In an indirect way, yes.

Q. In what way?

○A. Do you mean if—

Q. What is the extent of your authority over salesmen?

A. I am responsible for their expense reports and various internal reports which they must submit to us.

Q. But you are not responsible for their selling activities?

A. No, I am not.

Q. Can you answer this question, Mr. Vickery: can you economically make baby foods with Miller machines?

A. I cannot answer that.

Q. Were you ever in a Hazel-Atlas Glass Company plant prior to September, 1956?

A. Yes, I have been.

Q. What plant?

A. Zanesville, Ohio

Q. I am talking about the period prior to September, 1956.

[fol. 1345] A. Prior to September, 1956?

Q. Yes.

A. I am sorry, I did not get the year.

Q. September, 1956?

A. No, not prior to September, 1956.

Q. Looking at Government's Exhibit No. 363, could you tell me what the significance of the information in column No. 8 is?

A. Based on our records, the machines that were ordered as described were ordered with this equipment, either assembled or shipped loose with the other machines.

Q. If the attachments referred to were not shipped with the machine, would you know what effect that would have on the effectiveness of the operations of the machine?

A. As to their versatility?

Q. As to their versatility?

A. Well, the machines as shipped and with the attachments can make ware within the ranges and processes described in each column.

Q. If they do not have the attachments they cannot make it within those ranges?

Mr. Greenberg: Your Honor, I did not hear the question.

[fol. 1346] Q. If they do not have the attachments they cannot make it within those ranges, is that true?

A. No, the attachments may be available or could be made available through purchase. You are speaking as of today or as of the day they were shipped?

Q. Well, I am speaking—

The Court: If they did not have the attachments at all, they would not have the versatility?

The Witness: Not at the time of shipment.

The Court: The attachments might be shipped later, but, however, it did not require that they be shipped at the time that the machine was shipped?

The Witness: That is correct.

Q. And that document shows what attachments were ordered with the machines, is that correct?

A. Yes, it does.

Q. Are you familiar, sir, with any litigation between Hazel-Atlas Glass Company and Hartford Empire Manufacturing Company?

A. No, I am not.

Q. You have no information with respect to any such litigation?

A. No, I have not.

[fol. 1347] The Court: Incidentally, I may say in that connection, has Mr. Algeo returned?

Mr. Johnson: No, sir, as far as I know he has not.

Mr. McManus: Your Honor, did you want him?

The Court: No, simply that the questions that I desired to ask Mr. Algeo were in connection with that litigation, and there was an opportunity for you gentlemen to examine him on that subject matter while he was here.

Mr. Johnson: I have no further questions of this witness.

The Court: All right. Mr. Greenberg?

Mr. Greenberg: May I just have one moment?

The Court: Yes.

(Short pause.)

Redirect examination.

By Mr. Greenberg:

Q. Just two questions, Mr. Vickery: can the attachments that we have been discussing be transferred from one machine to the other?

A. Yes, they can.

Q. Sir, what is the difference between a four-section machine and a six-section machine?

[fol. 1348] A. Two sections.

(Laughter.)

Q. And all that means is increased production?

A. Yes.

Mr. Greenberg: That is all, your witness.

Mr. Johnson: No further questions.

The Court: All right, you may step down, Mr. Vickery, thank you.

(Witness excused.)

The Court: Next witness, gentlemen.

Mr. McManus: Mr. Foster.

JOHN M. FOSTER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. Foster?

A. Foster-Forbes Glass Company, Marion, Indiana.

Q. What is the nature of your business—your company manufactures glass containers primarily?

A. A general line of glass containers.

Q. And how many plants does your company have?

A. We just have one plant.

The Court: What are you, president of the company?
[fol. 1349]. The Witness: Yes, sir.

Q. Is your company a publicly-held company?

A. Yes, sir.

Q. Does the stock have wide distribution?

A. It does not, sir.

Q. Is most of the stock in your family?

A. In the Foster family and the Forbes family.

Q. And where is your plant located?

A. Marion, Indiana.

Q. You said you had just the one plant?

A. That's right.

Q. And how many employees do you have?

A. About 850 to 900.

Q. And approximately how many salesmen do you have?

A. Approximately 15 to 20.

Q. Were your sales for the year 1959 reported?

A. Yes, sir.

Q. Were they made public?

A. Yes, sir.

Q. And you report on a calendar year basis?

A. Yes, sir.

Q. And approximately what were your sales in 1959?

[fol. 1350] A. 12 million 6.

Q. Could you tell me within what area you usually ship your glass containers?

A. Mostly within the Mid-West area.

Q. Within a 500-mile radius of your plant, what percentage of your wares do you ship?

A. The only answer to that question that I might make would be a guess, but I would say 90 per cent.

Q. Could you tell me what types of wares you sell primarily, by census categories or otherwise?

A. Yes, sir. We manufacture food containers, both narrow and wide-mouth, cosmetic and toilet containers, beer bottles, proprietary drug and prescription bottles, liquor bottles, household and chemical bottles and jars. Those would be our main line.

Q. Does your company make any caps?

A. We do not, sir.

Q. Do you make any capping machinery?

A. No, sir.

Q. Do you make any corrugated shipping containers?

A. No, sir.

Q. Could you estimate the percentage of your glass containers that are shipped in corrugated shipping containers?

A. I would guess one hundred per cent.

Q. Could you estimate the approximate cost of the shipping containers to the price or the selling price of your product?

A. I don't know—I could make a guess but I don't really know.

The Court: Can you give us a fair estimate?

The Witness: Some place between 15 and 20 per cent, I would say.

Q. Could you tell me if any of your glass containers are sold west of the Rocky Mountains?

A. Practically none.

Q. When you say "practically none," you might have an occasional shipment?

A. Occasional.

Q. Do you sell any other types of containers other than glass containers?

A. No, sir.

[fol. 1352] Q. Do you sell containers made of any product other than glass?

A. No, sir.

Q. Do you sell any aerosol containers?

A. Yes, sir.

Q. And you sell an aerosol glass container?

A. Yes, sir.

Q. For how long a period have you been selling that item?

A. There again, it would be a guess, sir. I would presume three years.

Q. And is this aerosol glass container coated or uncoated?

A. It is uncoated.

Q. You have no plastic covering?

A. We do not.

Q. And for what purpose is that container used?

A. Mainly for cologne, toilet water and so on, hair spray.

Q. Now, you stated that you sell beer bottles; correct?

A. Yes, sir.

Q. Do you sell the returnable type?

A. Yes, sir.

[fol. 1353] Q. And do you sell the non-returnable type?

A. Yes, sir.

Q. Could you tell me if the price for the returnable is higher or lower than the price for the non-returnable?

A. It is higher.

Q. And could you tell me why that is so?

A. A returnable bottle is considerably heavier in glass weight than a non-returnable bottle, and is run more slowly on a machine, and for that reason it therefore commands a higher price because of its higher cost.

Q. Are there any other reasons?

A. Not that I know of, sir.

Q. For how long a period have you been manufacturing the non-returnable type, approximately how many?

A. Well, I can't answer that question.

Q. I see. Were you manufacturing returnable beer bottles before you went into the non-returnable field?

A. Simultaneously, I think.

Q. You went into both of them at the same time?

A. Practically, I believe, if my memory serves me correctly. [fol. 1354] It is quite a long time ago.

Q. Is your company a member of the Glass Container Manufacturers Institute?

A. We are.

Q. Do you attend as your company's representative?

A. At the annual and semi-annual meetings, we are in attendance.

Q. And for how long a period have you been attending?

A. Since it was formed.

Q. At the present time are you a member of any of their committees?

A. I am personally a member of one committee, the market and promotional committee.

Q. And you are familiar with the market research and promotion carried on by that committee?

A. Yes, sir.

Q. And are you furnished or have you examined the material prepared by that committee?

A. All of the material that comes to my desk I have examined, yes.

Q. And do you or do you not rely on that committee in helping formulate the sales policy of your own company?

A. It helps only, but doesn't guide us.

[fol. 1355] Mr. Johnson: I object to that question.

The Court: Overruled.

Q. What was the answer?

A. It helps, but it doesn't guide us.

Q. It is a factor in helping you?

A. Yes.

Mr. McManus: That is all I have.

The Court: All right, sir.

Cross-examination.

By Mr. Johnson:

Q. Mr. Foster, would you say that competition was keen and vigorous in the glass container industry?

A. At the present time, sir?

Q. Yes, sir.

A. Yes, sir.

The Court: Do you find that it has grown more keen and vigorous or less keen and vigorous since 1956?

The Witness: More.

The Court: More.

The Witness: Yes.

Q. Do you obtain your shipping containers from more than one source, Mr. Foster?

A. Yes, sir.

Q. How far from your plant are the shipping containers [fol. 1356] manufactured, which you buy?

A. 95 per cent of them are made within five miles of our plant.

Q. How are they delivered to your plant?

A. By truck, on pallets.

Q. Is there any particular reason why you buy them so close to your plant?

A. Yes, for service reasons.

Q. By "service reasons," you mean what?

A. I mean that we get practically overnight service on

cartons for a run of bottles the next day. If we order them one afternoon, we will get them in the morning, and when there is less than five miles to haul, there isn't much of a delivery problem.

Q. Does that mean that you don't have to warehouse very many shipping containers?

A. That is correct, sir.

Q. And is that important to you?

A. Very important.

The Court: I take it shipping containers are items that take up a great deal of warehouse space?

The Witness: Your Honor, that is correct.

Q. Do various shipping container manufacturers try to get business from you?

[fol. 4357] A. Yes, sir.

Q. Now, you referred to the proportion of cost of your shipping container to the total selling price of the glass containers. Isn't it true that the proportion of cost of the shipping container to the total selling price varies greatly depending on the type of ware?

A. That's right.

Q. Type of glass container?

A. That is correct, sir.

Q. Your shipping containers are manufactured to your own specifications, are they not?

A. That is correct.

Q. Do you regard the shipping container as one of the constituent parts of the product which you sell?

A. Yes, sir.

Q. Your total selling price is designed to return a profit on overhead, raw material, fuel, shipping container and all the other things that go into the total product, is it not?

A. That's right.

Q. Do many of your customers, sir, buy glass from other suppliers?

A. The majority of them do, sir.

[fol. 1358] Q. Do the brewers, to whom you sell beer bottles, all also use cans?

A. Yes, sir.

Q. Sir, do you have a decorating plant?

A. We do not.

Q. Does the fact that you do not have a decorating plant have any effect on your sales of beverage bottles?

A. Has a very, very great effect on the lack of sales—I mean, our lack of having a decorating plant.

Q. What is that effect?

A. It makes us sell fewer soda bottles.

Q. Why is it important to have a decorating plant?

A. Most of the large users of soda bottles now require decorative bottles.

Q. You do have a New York office, do you not?

A. We do, sir.

Q. New York sales office?

A. Yes, sir.

Q. And you do sell in this area some at least?

A. We sell a certain amount of selective items in this area.

[fol. 1359] Q. Now, sir, you referred to a plastic-coated glass aerosol.

Mr. McManus: I object, your Honor. We did not.

Mr. Johnson: Sorry.

The Court: Well, somebody referred to it in the course of the examination.

Q. Am I correct, sir, that on your direct examination you were asked if you sold aerosol bottles?

A. I was asked if I—

Q. Aerosol?

A. Yes, sir.

Q. And you testified, did you not, that you sold the glass aerosols?

A. That is correct.

Q. And those are coated glass aerosols?

A. I said they were uncoated.

Q. They were uncoated. I am sorry.

I don't want to get into specific details, Mr. Foster, but is there some way that you could indicate to me what relationship the volume of those glass aerosols bears to the rest of your business?

The Witness: Well, that would be a very confidential question, your Honor. I will answer it if you so rule.

[fol. 1360] The Court: Well, I don't want to do anything

that will embarrass any of these witnesses. Let's just put it this way:

Is there any substantial volume in that, sir?

The Witness: There is not, sir.

The Court: There is not.

Is that sufficient for your purpose?

Mr. Johnson: I believe so, sir.

The Court: I say "substantial" when I compare your entire volume,

The Witness: Yes, sir.

Mr. Johnson: Will you mark this document for identification.

(Marked Defendants' Exhibit L for identification.)

Q. Are you familiar, sir, with this document, which has been marked Defendants' Exhibit L for identification?

A. Yes, sir.

Q. Tell me what it is?

A. That is our 1959 annual report to stockholders.

Q. And this report contains a table, showing amongst other things your net sales by years since 1950 to 1959, does [fol. 1361] it not, sir?

A. '50 to '59; that is correct, sir.

Q. It also shows among other things your net income after Federal income taxes.

A. Yes, sir.

Q. And it shows that your sales for the year 1955 were seven million nine plus; does it not?

A. That's right.

Q. And your earnings in that year were \$250,000, approximately?

A. Approximately; that's right, sir.

Q. It shows that your sales in 1959 were twelve million six plus, does it not?

A. That's right, sir.

Q. And your net income after Federal income taxes for that year were \$896,000 plus, were they not?

A. That's right, sir.

By the Court:

Q. Let me ask you one thing, Mr. Foster:

in connection with these gross dollar volume of sales figures, has the price of the glass container risen appreciably between 1955 and 1959, sir?

A. Your Honor, that is a question that I really can't answer. I know in the last year the prices have weakened [fol. 1362] tremendously.

Q. Thinking in terms of the prices that you and your competitors charge to your customers?

A. I would say that they have not risen appreciably.

Q. They have not risen appreciably?

A. That's right.

Q. Perhaps there has been some rise, but it is insubstantial?

A. I would say such a thing.

Q. Correct. And you say the price structure has weakened during the last year?

A. During the last year, substantially.

Mr. Johnson: I offer Defendants' Exhibit L for identification.

Mr. McManus: No objection, your Honor.

The Court: That will be received.

(Defendants' Exhibit L for identification received in evidence.)

By Mr. Johnson:

Q. Mr. Foster, you referred, I believe, on direct examination to glass containers sold by your company for use as food containers?

A. Yes, sir.

[fol. 1363] Q. Could you tell me the principal end uses for which those food containers, those glass containers, are used?

A. Catsup, sweet cider or apple juice, jam, pickles, mayonnaise, honey, peanut butter.

By the Court:

Q. Mr. Foster, plainly, the shape of the container for catsup would be different, for instance, from that of a container for cider; is that right?

A. That's right; yes, sir.

Q. But except for the differences in shape, there is no difference in the material used for any of these different things; is there?

A. Glass material is all the same.

Q. Is all the same.

A. In our plant.

Q. Yes.

A. I might add to that one more thing. In the flint color, in the clear flint glass. Now, in making amber glass, we make slightly different material than we use in making flint glass. I would like to qualify that statement.

Q. Is that, Mr. Foster, because of the amber color? Is it because of the coloring?

[fol. 1364] A. Yes, on account of the coloring.

Q. In other words, I take it that the compound is slightly different because you use a color method.

A. Yes, we use a substitute for lime. We use a steel mill slag.

By Mr. Johnson:

Q. Do you sell any opalware?

A. We do not.

Q. This glass aerosol, to which you referred, is that a relatively high priced glass container?

A. It is.

Q. Just as a matter of definition, you used the term "returnable bottle"—

A. Yes, sir.

Q. —on your testimony. Will you tell me what you meant by "returnable"?

A. A multiple trip container.

Mr. Johnson: That is all.

Mr. McManus: No further questions, your Honor.

The Court: Thank you, Mr. Foster. You may step down.

(Witness excused.)

The Court: Now I think we will take our morning recess [fol. 1365] at this point before the next witness.

(Short recess.)

The Court: All right, next witness, please.

Mr. McManus: Mr. McDonald, please.

F. W. McDONALD, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. McDonald, by whom are you presently employed?

A. Foster-Forbes Glass Company.

Q. And for what period of time have you been employed by them?

A. For about three months.

Q. And prior to that were you in the glass container industry?

A. Yes, I was with the Glass Container Corporation on the Pacific Coast. Prior to that, the Glass Containers, Incorporated, on the Pacific Coast.

Q. And what span of years would that cover?

A. About 13 years.

Q. And was the Glass Containers, Incorporated, the same company—

[fol. 1366] Mr. McManus: I will strike that.

Q. Did that have the same plant facilities as Glass Containers Corp.?

A. No, there has been a change. Glass Containers, Incorporated, had two plants. Do you want me to explain that?

Q. Yes. Will you tell me where they were located?

A. Well, one at Antioch and one in Los Angeles, California.

The Court: Is Antioch in the North?

The Witness: Yes.

Q. And that was Glass Containers, Incorporated?

A. Right.

Q. Now, how many plants does Glass Containers Corporation have?

A. Three.

Q. Three plants?

A. Yes.

Q. Where are they located?

A. Well, the ones,—Los Angeles, Antioch, and the former United Can & Glass plant, at Hayward, California, which is also—that is now also operated by Glass Container Corporation.

[fol. 1367] The Court: In other words, Glass Container Corporation, what did they do, merge, or did they simply purchase another plant?

The Witness: Glass Containers, Incorporated, was purchased by Hunt Foods, who already had a plant. The three of them are now operated as one company.

Q. And are they operated by Hunt Foods?

A. As a wholly owned subsidiary of Hunt Foods.

Q. And was Glass Containers, Incorporated, a subsidiary of another company?

A. Yes.

Q. And of what company?

A. Wholly owned subsidiary of Fiberboard Company, Incorporated.

Q. And for what period of time were you associated with Glass Containers Corporation?

A. About five years, just a little less.

The Court: When did the change from Glass Containers, Inc. to Glass Containers Corporation take place?

A. June 20, 1955.

Q. And you were with Glass Containers Corporation from that date until just several months ago?

A. Approximately four months ago.

[fol. 1368] The Court: What position did you hold?

The Witness: I held the position of vice-president, general manager, executive vice-president and vice-president.

Q. And would that be for all three of the plants? Would you cover all three of the plants?

A. Yes.

Q. Could you tell me how many tanks they had at the Los Angeles plant?

A. Two tanks.

Q. And do you know how many machines?

A. Eleven.

Q. And at the Antioch plant?

A. Six and one, one furnace, six machines.

Q. And at the Hayward plant?

A. One furnace, six machines.

Q. We will confine our questions now to Glass Containers Corporation and the time that you spent with them.

A. Fine. Well, now, of course, I would like to have this clear. I am no longer with the company and I don't have access to their records.

Q. I understand that, but we are only covering your knowledge during the five years that you were with that [fol. 1369] corporation.

A. Fine.

Q. Can you tell me first the type of glass containers that your company was selling?

A. Yes. It represented pretty much of a cross-section of the industry, and we made food containers, both narrow neck and wide mouth. We made beer bottles, both returnable and non-returnable. We made beverage bottles, milk bottles, household chemicals, and pretty much of a general cross-section of the industry.

The Court: Was Hunt Foods one of your large customers?

The Witness: Yes.

Q. Could you say or could you give an approximation of the amount of glass that was purchased or that you delivered to Hunt Foods?

A. Well, yes, I know approximately. That of course would be confidential information, unless I am instructed to answer.

Q. Could you do it within a range, so that it would not be too revealing?

By the Court:

Q. Well, let's put it this way:
[fol. 1370] Did Glass Container Corporation publish their figures?

A. No, sir; they did not.

Q. Can you tell us in general what their gross volume of business was?

A. In dollars?

Q. Yes, roughly?

A. 18 to 20 million.

Q. 18 to 20. And can you tell us without going into it, without violating any confidence, roughly what proportion of that went to Hunt Foods?

A. Approximately 8 to 12 per cent.

The Court: Yes.

By Mr. McManus:

Q. 8 to 12 per cent.

A. Yes.

Q. And could you tell me in what area you sold?

A. We sold in the eleven Western states—seven Western states.

Q. And could you list them for us, please?

A. Well, that would be California, Oregon, Washington, very little in Idaho; Utah, Nevada and Arizona, and into Colorado. I think that covers it.

[fol. 1371] Q. You, of course, are in the position of being familiar with the selling prices on the West Coast and in that area?

A. Yes, sir.

Q. And have you become familiar with the selling prices in the Eastern area?

A. No, I couldn't say that I have.

Q. Are you familiar enough with the selling prices to know if they are higher or lower on the West Coast?

A. Historically the prices on the Pacific Coast have been higher than in the East.

The Court: Can you tell us by way of rough approximation how much higher?

The Witness: The historical figure is about 15 per cent, but now that does not apply to all classes of ware.

The Court: I understand that.

Q. On the West Coast, and confining our questions to the West Coast, have prices of glass containers generally increased or decreased from 1955 to when you left?

A. Well, that is a very difficult question to answer. There have been some general increases in that period, but on [fol. 1372] the other hand—yes, I would say, over-all, they have increased.

Q. There may be selected items as to which they have increased appreciably and others that have not?

A. And at times somewhat of a softening of the market.

Q. So that on the West Coast it is very difficult to tell unless you go item by item?

A. Yes, I would say over-all they are higher now than they were in 1955 but I couldn't give you an estimate.

Q. Could you tell me how many employees you had at your three plants when you left?

A. Approximately one thousand.

Q. How large a sales force did you have?

A. About 12 to 15.

Q. Was Glass Containers Corporation a member of the Glass Container Manufacturers Institute?

A. Yes, sir.

Q. They were at the time you left?

A. Yes, sir.

Q. And were they during the period 1955 to when you left?

A. Not during the entire period.

[fol. 1373] Q. What period of time, approximately?

A. As I recall, all but one year of that, and that would be the first year—I am not completely sure of that.

Q. Did you attend the meetings of the Glass Container Manufacturers Institute?

A. I have not in the last five years—correction. I did attend West Coast meetings, yes, but not in the East. I was thinking of the national meetings. I have attended West Coast meetings.

Q. You say that you have attended West Coast meetings. Do they have meetings on the West Coast which are separate from the rest of the country?

A. Yes, they do.

Q. Do you have a separate division out there?

A. Well, we have subcommittees out there that function on the Pacific Coast only. They are separate committees of the major committees on the East.

Q. Have you been active in any of the subcommittees?

A. On the West Coast, yes.

Q. What committees would those be?

A. Government and industry relations and sales promotion and research.

[fol. 1374] Q. What was your activity in the Sales Promotion and Research Committee?

A. My personal activities or the activities of the committee?

Q. First, the activities of the committee.

A. The sales promotion primarily—we have now underway a beer bottle campaign—the industry has a beer bottle promotion campaign now, and I believe that at the present time on the West Coast they have a promotional campaign on one-way beverage bottles. Our activities would be concerned with things like that.

Q. When you say one-way beverage bottles, you are talking about soft drinks as being differentiated from liquor bottles?

A. Yes.

Q. And alcohol bottles?

A. Yes.

Q. Have there been prior sales promotions of the type that you mention?

A. Yes, sir.

Q. On the West Coast?

A. Yes.

Q. And of which you have knowledge?

A. Well, I have some recollections of them.

Q. Were you active in any such campaigns?

[fol. 1375] A. Yes.

Q. In what category of way would those be?

A. Well, principally in the one-way non-returnable beer bottle.

Q. Were other companies represented on that committee that was promoting one-way non-returnable beer bottles?

A. Generally all the companies that made beer bottles.

Q. How about soft drinks? You say that there was a soft drink campaign?

A. There is a campaign now, I understand, a promotional campaign on the Pacific Coast, about which I am not familiar.

Q. You are not active in that?

A. No.

Q. Were there prior campaigns on soft drinks to your knowledge?

A. Yes, I believe that there were.

Q. Were you active in those prior campaigns?

A. Yes, sir.

Q. Do you know the other companies that were active with you in those campaigns?

A. Yes.

[fol. 1376] Q. And who would they be?

A. Do you want me to name all of the companies?

Q. All of them that you can recall.

A. I don't know whether all of the companies out there—I don't recall whether all of the companies out there that made soft drinks were active or not.

Q. I am just asking you for the ones that you can recall.

A. Owens-Illinois, Maywood Glass Company, Latchford Glass Company and ourselves.

Q. Those are the only ones you can recall?

A. Yes, sir. I am trying to think of the other people out there, but those are the only ones that I can recall.

Q. There could be others but you do not recall them?

A. There could be.

Q. We are still confining ourselves to the Glass Containers Corporation in the period of time you were with them. Did that company make caps for glass containers?

A. No.

Q. Did you make capping machines?

[fol. 1377] A. No.

Q. Did you make corrugated shipping containers?

A. No, sir.

Q. Could you estimate approximately how many of your shipping containers were sold—how many of your glass containers were sold in corrugated shipping containers?

A. Oh, 98 or 99 per cent.

Q. Could you estimate the approximate cost of the final

selling price of the glass container which was represented by the shipping container?

A. That depends on what business we are in. I would say on an average of 20 per cent.

Q. We are talking about the Glass Containers Corporation.

A. Well, I would say 20 to 25 per cent.

Mr. McManus: That is all.

The Court: All right, Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. McDonald, did Glass Containers Corporation ship into Denver?

A. Yes.

Q. You referred to sales of glass containers to Hunt [fol. 1378] Foods. Do you know for what end products Hunt Foods used these glass containers?

A. Yes, I do.

Q. Would you tell me what they were?

The Witness: Your Honor, am I required to answer questions which might be confidential? I am no longer with this company but—

The Court: Well, it seems to me that I would doubt, frankly and very seriously, Mr. McDonald, whether the products put out by Hunt Foods in your containers would be confidential. If you can explain to me how that information would be confidential or might adversely affect the interest of either company, I would consider it, but I don't quite follow how that could be.

A. Catsup and vinegar.

Q. Would you tell me what kind of closures Hunt Foods used on these glass containers?

A. To the best of my recollection, they used the Aleqa cap on the catsup bottles, and I don't recall what they used on the vinegar bottles.

Q. Did Glass Containers Corporation at the time you left have more than one source from which it obtained shipping containers?

A. Yee, sir.

[fol. 1379] Q. How far from the Glass Containers plant were these shipping containers which Glass Containers Corporation purchased manufactured?

A. Well, we had three plants, and one of them was just across the railroad tracks, another plant was perhaps 8 to 10 miles away, and I would say about the same with the other plant.

Q. All within a very few miles?

A. Yes.

Q. How were they delivered to the Glass Containers plants?

A. On palletized trucks.

Q. Again referring to the time just previous to when you left Glass Containers Corporation, did various shipping container manufacturers solicit your shipping container business from you?

A. Yes, sir.

Q. You referred to the proportionate cost of a shipping container to the total selling price. Isn't it true that that proportion varies depending on the type of glass containers that you manufacture?

A. Yes, principally on the size of the glass container.

Q. Glass Containers Corporation's shipping containers were manufactured to its own specifications, were they not?

[fol. 1380] A. Yes, sir.

Q. Do you regard shipping containers either in your experience with Glass Containers Corporation or Glass Containers, Inc. as one of the constituent parts of the products that you sell?

A. Yes, sir.

Q. And the total selling price is designed to return a profit over the total cost of labor, fuel, raw material, shipping containers—

A. Yes, sir.

Q. —and all of that?

A. Yes, sir.

Q. You referred to the prior owner of Glass Containers Corporation and I think you said that was Fibreboard Products Company?

A. Fibreboard Products, Inc., yes, sir.

Q. Would you tell me what Fibreboard Products, Inc. was, what its business was?

A. They manufactured boxboard parts.

Q. Did they operate paper mills also?

A. Yes, sir.

Q. I think you said that they sold Glass Containers Corporation in 1955?

A. Yes, sir.

[fol. 1381] Q. Now prior to that sale who had been the supplier of shipping containers to Glass Containers Corporation?

A. Fibreboard Products was our parent company and they supplied the shipping containers.

The Court: I take it that after the transfer of ownership of the company that was no longer true?

The Witness: They continued to supply us.

The Court: All or part?

The Witness: A part.

The Court: A part?

The Witness: Yes, sir.

Q. And at the time you left Glass Containers Corporation had more than one source of supply?

A. Yes, sir.

Q. Did Glass Containers Corporation's customers have more than one source of supply for glass containers?

A. Yes.

Q. Did Glass Containers Corporation supply glass containers to national accounts?

A. Yes, sir.

Q. You referred to the higher prices of glass containers in the West over the East. Do you know why those prices [fol. 1382] are higher?

A. The costs have always been higher on the Pacific Coast than in the East, and it was necessary to charge higher prices out there.

The Court: Due to what factors?

The Witness: Labor costs are higher out there and have been higher, and up to a very short time ago some of the other materials which we purchased were higher.

The Court: Was there any shortage of raw materials on

the West Coast which required the importation of those materials?

The Witness: Not any major materials, no. We do ship our materials longer distances out there, I believe.

Q. With reference to some of the prior promotions of Glass Container Manufacturers Institute, I believe you said that there was a one-way returnable promotion, and you thought that there might have been a soft drink promotion, is that correct?

A. Yes, sir.

Q. Do you know how those were financed?

A. Yes, they were financed by the—I am thinking of the beer bottle campaign quite a few years ago and that was [fol. 1383] financed by the beer companies on the Pacific Coast.

Q. And was that financed by—

A. By the glass companies.

Q. Was it financed by assessments, by special assessments?

A. Yes, by agreement.

Q. You were in the glass business on the West Coast in 1956, were you not?

A. Yes, sir.

Q. Were you familiar with the plants and business of Hazel-Atlas Glass Company on the West Coast?

A. I was not familiar with their plants, no, sir.

Q. Were you familiar with their business?

A. I tried to be as familiar as I could with their business.

Q. Do you know if they manufactured the beverage bottles?

Mr. McManus: Your Honor, I am going to object to that. I think that there is better evidence than this gentleman's knowledge.

The Court: That may be, but if he knows, he can say.

Mr. McManus: But, your Honor, I would think that evidence of what they actually sold are in records that are [fol. 1384] available to us. This gentleman is really making a guess estimate.

The Court: Well, if he knows.

Do you know whether they manufactured beverage bottles on the West Coast? If you don't know, say so.

The Witness: I don't know.

The Court: You don't?

The Witness: No.

Q. And you do not know whether they participated in prior promotions, is that right?

A. I don't recall.

Q. Do you know if they participated in any of what you referred to as a later promotion?

A. I don't recall that either.

Q. What kind of machines does Glass Containers Corporation have, that is, glass container forming machines?

A. IS machines.

Q. Entirely?

A. Yes, sir.

Q. Glass Containers Corporation manufactured beverage bottles, did it not?

A. Yes.

Q. Was the number of beverage bottles which Glass Containers Corporation manufactured and sold increased each year during the period 1956 to 1959?

A. I couldn't give you a definite answer on that.

Q. Let me ask you this: was the number sold in 1959 more than in 1956?

A. I no longer have access to Glass Containers Corporation's records and I couldn't answer that.

Q. You can't remember?

A. No.

Q. Would you say that competition on the West Coast is keen in the glass container industry?

A. Yes, sir.

The Court: Can you tell us whether or not competition in the glass container industry on the Pacific Coast was more keen and vigorous or less keen and vigorous in 1959 than in 1956?

A. I would say that, if anything, it was more vigorous in 1959.

Q. I think you said, Mr. McDonald, that Glass Containers Corporation does not publish its sales figures, is that correct?

A. Yes, sir.

Q. And they do not publish their earnings figures either, is that correct?

[fol. 1386] A. That is correct.

Q. At the time that you were with Glass Containers Corporation, did Hunt Foods, which I understand was the parent company of Glass Containers Corporation, own any other subsidiaries?

A. Yes, a number of them. Now, you say subsidiaries. They certainly had interests in other companies, but whether or not they were subsidiaries I don't know.

Q. Did Hunt Foods either directly or through a subsidiary manufacture and sell cans?

A. Yes, sir.

Q. Did the Glass Containers Corporation's salesmen sell cans?

A. Not ordinarily, no.

Q. Did the Hunt Foods people, whatever division it was, its can salesmen, sell glass containers?

A. Not ordinarily, no.

Q. Did Hunt Foods, either directly or through any of its subsidiaries, manufacture or sell closures?

A. We did manufacture closures for a very short period of time, several years ago.

Q. Glass Containers Corporation?

A. No, that was the Can Division of United Can & Glass. [fol. 1387] Q. What type of closure was that?

A. Screw-cap closures and the roll-on closures for wine bottles.

Q. Were those closures sold separately from the glass containers?

A. Yes, sir.

Q. They were priced and sold separately?

A. Yes, sir, but that was for a very short period of time.

Q. When was that?

A. What is that?

Q. When was it?

A. Two or three years ago, I would say.

Mr. Johnson: That is all.

The Court: All right, Mr. McManus.

Redirect examination.

By Mr. McManus:

Q. Mr. McDonald, could you estimate what percentage of Glass Containers Corporation's sales were in the State of California, approximately?

A. It would be a rather wild guess estimate.

Q. Well, I will take that.

A. My guess—

Mr. Johnson: I object to that.

The Court: If the witness doesn't know, there is no use [fol. 1388] of having pure guesswork.

Q. You said that you did ship some glass containers into Denver?

A. Yes, sir.

Q. Did you have more than one account in Denver?

A. Yes.

Q. Did you have more than five?

A. No, sir.

Q. Did you have more than one type of container that you shipped into Denver?

A. Yes, sir.

Q. Did you have more than five?

A. No, sir.

Q. Would you know approximately what percentage of your glass containers went into Denver, would it be under 5 per cent?

A. Yes, sir.

Q. It would be under 5 per cent?

A. Yes, sir.

Q. You mentioned that your company used the Alcoa cap?

A. I said I believe that they did, yes.

Q. And that is a metal screw cap?

A. Yes.

[fol. 1389] Q. It is not a vacuum-type cap?

A. Yes, it is a vacuum type cap.

Q. It is a vacuum-type cap?

A. Yes.

Q. Have they always during the five-year period that you

were familiar with this business, have they always used the vacuum-type cap for their catsup bottle?

A. As far as I know, they did.

Q. To your knowledge, they have not used the non-vacuum screw cap?

A. Not that I know of.

Q. And that would be from 1955 to 1959?

A. Yes, sir.

Q. Now you were asked a question in which you said you thought that the shipping container was a constituent part of the product. Will you explain what you mean by a constituent part?

A. Well, I was asked that question. It is a very integral part of the package.

Q. Your company does sell glass containers?

A. We sell them, yes, sir.

Q. And the corrugated shipping container is the means of transporting the glass containers, is that correct?

[fol. 1390] The Court: Let us find out from this witness about these corrugated containers.

The corrugated container in which you ship the glass container, is that corrugated container prepared by you for eventual use by the customer?

The Witness: Yes, most of them are. Most of them are used by the customers.

The Court: In other words, in shipping off that corrugated container, it has the customer's name, insignia and so forth on them?

The Witness: Many of them are printed with the customer's name and his trade-mark.

The Court: Or a symbol, or whatever it may be?

The Witness: Yes, sir.

The Court: And can you tell us whether or not in such instances the customer sends out the filled and capped jars in that container to his eventual customer?

The Witness: Yes, sir.

The Court: He uses the same container?

The Witness: Yes, sir.

The Court: To ship it out to the distributor or wherever it is going?

The Witness: Yes, sir.

The Court: And is that what you meant by a shipping [fols. 1391-1405] container?

The Witness: Yes, I think that explains it quite as well as anything.

Q. You indicated that your company sold national accounts?

A. Yes, sir.

Q. Would Hunt Foods be considered as a national account? Is that the type of account you had reference to?

A. I would consider that a national account, yes, sir.

Q. In your sales to national accounts, you didn't ship them east of the Rockies, did you?

A. No, sir.

Q. Only—

A. On the Pacific Coast.

Mr. McManus: That is all, your Honor.

The Court: Anything further, gentlemen?

Mr. Johnson: No, sir.

The Court: All right, you may step down, thank you.

(Witness excused.)

[fol. 1406] STANLEY FRAME, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, the Government will refer to Government's Exhibits G-419-A, B and C with this witness.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. 1 Bay View Road, Plandome, Long Island.

Q. What is your present position?

A. I am director of market research, National Biscuit Company.

Q. How long have you held that position?

A. 14 years.

Q. Just generally what are your duties and responsibilities in that position?

A. Expanding of our market position and development of new products.

Q. Were you employed by Continental Can Company?
[fol. 1407] A. Yes.

Q. During what period of time?

A. September, 1943, to May, 1946.

Q. What position or positions, if more than one, did you hold with Continental Can Company?

A. Manager of market analysis.

Q. How long did you hold that position?

A. Three years.

Q. What were the functions of the market analysis department?

A. To get an orderly understanding of our market position and to expand the sphere of our markets.

Q. What were your duties and responsibilities within that framework?

A. The determination of the acceptance of Continental Can Company's products.

Q. Was your group connected with any other group within the company?

A. Not with our department directly.

The Court: With what departments did you maintain liaison?

The Witness: Sales department.

Mr. Greenberg: What was that?

The Witness: Sales department.

[fol. 1408] Mr. Greenberg: Now, your Honor, we have a stipulation here that this witness executed the documents, and I would just as soon offer them at this time rather than go through the routine of asking questions that have been stipulated to.

The Court: All right. The Court will allow Mr. Hughes to examine on the voir dire.

Mr. Greenberg: I offer G-419-A, B and C.

The Court: Does Mr. Frame have the same relationship with respect to 419-A, B and C?

Mr. Greenberg: He signed them and wrote them, I believe.

The Witness: I am not sure just which ones——

The Court: You better let him see them.

Q. I show you Government's Exhibit 419-A for identification and ask you if you recognize it, if you do recognize it?

A. Yes, I recognize this, 419-A.

Q. Do you recognize 419-B?

A. Yes.

Q. Do you recognize 419-C?

A. Yes.

Q. What are they, sir.

A. They are a study of consumer attitude towards baby [fol. 1409] foods, the packaging of baby foods, with particular emphasis between glass and tin or metal containers.

Q. Who compiled this document?

A. I did.

Q. Do you know what distribution was made of this document?

A. I know that Mr. Fogarty got a copy, and it was rather restricted inside the company's office. I don't think there was any outside.

Q. Who within your organization received copies of these documents?

A. The vice-president for sales, I believe and Mr. Perin, Mr. Falk, Mr. Fogarty, as is indicated here.

The Court: What were their titles respectively?

The Witness: Mr. Fogarty, I believe, was the Eastern Divisional Sales Manager at the time, or director of sales, Eastern Division. Mr. Carlier was on the West Coast, director of sales in the Pacific Division. No, I am sorry, Mr. Fogarty was director of sales for the company, and Mr. Perin had been director of sales for the Eastern Division and Mr. Falk was on the Coast.

Q. There were other individuals who purportedly received 419-A. Do you know whether copies were received [fol. 1410] by these individuals?

A. Yes, I know they were. Mr. Funderburg—

Q. Who is Mr. Funderburg?

A. He is vice-president for sales.

Q. He was at that time?

A. Yes. Mr. Carlier was director of advertising. Mr. Baldwin was in charge of general line can sales. Mr. Nichols I don't know, and Mr. Hodgson I don't know—I didn't know them personally.

The Court: Let me ask you this: Did your department conduct this market analysis itself?

The Witness: Yes, sir, we did.

The Court: You had a staff?

The Witness: A very limited staff, about three people.

The Court: And those three people did the sampling that is reflected in these reports themselves under your supervision?

The Witness: This was a survey made by mail.

The Court: By mail?

The Witness: Yes, sir.

The Court: All right.

[fol. 1411] Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Frame, isn't it a fact that Exhibits 419-B and 419-C are merely a part of 419-A?

A. Yes, they are all the same report, yes.

Q. And 419-B and C are just other copies of part of the total Exhibit 419-A; isn't that right?

A. Let me see it.

Q. That is 419-A.

A. Yes. Actually the question—yes, it is all the same.

Q. Now, at the time when this document was prepared, were you an officer of the corporation?

A. No.

Q. Were you a director of the corporation?

A. No.

Q. Did you have any power to commit the corporation to any sort of expenditures?

A. No.

Q. Did you make policies for the corporation?

A. No.

Q. And were your duties confined to the market analysis department?

A. Yes.

Q. And would you say, and did you consider at the time, [fol. 1412] that this survey was preliminary in nature?

A. Wholly preliminary, wholly exploratory, merely an indication, not definitive.

Q. Would you be in a position to tell the extent of the bias in the sample that you used?

A. No, but for that very reason—excuse me. No, the answer is no.

The Court: What do you mean by the "extent of the bias," Mr. Hughes?

Q. Would you tell his Honor what is meant by that term?

A. Yes. This is rather technical, but whenever you are measuring a universe, you must make sure, if you are trying to get a sample—in this case we had to get a sample of all mothers who had had babies within the last—between three months ago and nine or ten or eleven months ago—to find out what the market for baby food in strained and chopped was. However, the bias and the extent to which we can determine it was simply this: That we, through a private source that lists from hospitals, who furnish the names of such mothers, we don't know whether they represented all the various levels and reaches of the population we were trying to reach. Therefore we didn't—
[fol. 1413] The Court: Therefore, you don't know how accurate it was, or whether it was a true cross-section of maternity?

The Witness: That's right; we do not.

Q. And do you know what happened to this document after you prepared it, beyond the fact that you supplied copies to the gentlemen whom you have indicated on your direct examination?

A. No, sir; I do not.

Q. Do you know of any action taken by any of them on this document?

A. No.

Mr. Hughes: Your Honor, I object to it as incompetent, irrelevant and immaterial.

The Court: Do you want to be heard on the subject?

Mr. Hughes: Well, your Honor, it does seem to me that in accordance with the cases that there hasn't been any showing of adequacy of the sample. Indeed, the witness acknowledges that he isn't able to measure the extent of the bias.

The Court: I think, Mr. Hughes, that this is a document from your files with reference to certain activities that were [fol. 1414] carried on by your employee. Whether it has any weight at all or whether it is any evidence of a state of mind, it is evident that these facts report the deed, that this material, let's call it that, was brought to the attention of the responsible officers of the company.

I will take it without in any way commenting on the weight that may be given to it.

Mr. Hughes: May I make just two additional observations?

One, that the witness has indicated that it was merely preliminary and exploratory.

The Court: That's right; it is all taken against the background of the witness' testimony.

Mr. Hughes: Yes. And may I add further a ground of objection, that there is no proof of adoption in any respect by the corporation of anything contained in the document.

The Court: Well, that may be, Mr. Hughes, but I don't think that the adoption theory is of any consequence. It is information that came to the attention of responsible officers of the company, and this is not, as I understand it, being offered to show any action by the company. It is being [fol. 1415] offered merely for the purpose of showing that here was some information, of whatever value it may be, that was brought to the attention of responsible officers, period.

COLLOQUY BETWEEN COURT AND COUNSEL RE DOCUMENTS

Mr. Hughes: Well, your Honor, I think this raises again the question which I raised yesterday, and which I would just briefly like to allude to again, and that is the procedure that we are being confronted with in this enormous mass of Government documents. Your Honor has indicated that you thought that the purpose was merely some indication,

that it was being offered as some indication of the state of mind. I was under the impression throughout—

The Court: I didn't even say a state of mind.

Mr. Hughes: Well, in any event, your Honor, I was under the impression from the pretrial that when we got to the presentation of the documentary proof, that the procedure would be that the Government would in each instance specify the purpose for which it was being offered.

The Court: I think, Mr. Hughes, that is a very pertinent question, which you are entitled to ask and you are entitled to hear from the Government.

[fol. 1416] Mr. Hughes: Well, I do so now.

The Court: I am assuming from the face of this thing, perhaps making assumptions that I am not justified in making. If that is so, let's hear from the Government, to hear what they say the purpose of this document is.

Mr. Greenberg: Your Honor, we are not putting in this document to show that Continental Can found that a certain percentage of mothers preferred one type of container or another. We realize there may be biases and things of that nature involved. But it fits into the background. It shows the context in which the various operating departments of this corporation operated in, and it shows that they were concerned with competition from other containers.

The Court: Are you trying to show that it shows awareness of other problems?

Mr. Greenberg: Yes, sir; and tied in with other documents and other facts contained in the documents and the record, we say it proves the proposition that containers compete, and this company was involved in that competition.

The Court: Well, may I say, so that there is no mistake about it, that this standing by itself proves little if anything [fol. 1417] except that the responsible sales officers of the company were aware of a problem.

Mr. Hughes: Yes. Well, as I understand it, that is the purpose of the offer.

The Court: Yes.

Mr. Hughes: Very well.

The Court: And I will take your objection, Mr. Hughes, and overrule it.

Mr. Hughes: Yes.

The Court: And take it with the express understanding that any such documents are to be read not only in the light of what they say about themselves, but also in the light of the testimony of the witnesses with respect thereto.

(Government's Exhibits 419-A, B and C received in evidence.)

The Court: Now, is there anything further from Mr. Frame?

Mr. Hughes: There may be, your Honor.

The Court: Yes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Frame, do you recall about how much was expended in conducting the survey that became reduced to [fol. 1418] writing in Exhibit 419-A?

A. Yes. Actually, the total out-of-pocket expense was not, as I recall the figure, was not over \$300. I think it was \$250, but in no event over \$300.

Q. And was this a document that was given any serious or heavy consideration by anybody within the corporate organization, so far as you know?

A. Not as far as I know.

Q. And can you tell us briefly how you went about preparing the survey and administering it or executing it?

A. Well, the key factor was the development of the ascertainment of the specific names, in other words, those mothers who had babies and therefore were thought to be the most representative group of people that we could identify. And this questionnaire was developed without any pretesting. It was a situation where you actually had to have personal contact, but since the company didn't want to then spend the money, the mail substitute was developed, and it was a very poor substitute, therefore.

Q. Are you saying that for a survey really to be efficacious, there has to be a pretesting of the survey itself?

[fol. 1419] A. Yes, very much so in this case.

Q. And that was not done in this case?

A. That was not done.

Q. Well, do you know and can you tell us whether in fact any one in the organization read this document?

A. I am sure it was read. I know it was read.

Q. Beyond that you wouldn't go?

A. No, I wouldn't.

Mr. Hughes: That is all.

The Court: Anything further?

Mr. Greenberg: Just one question, your Honor. There is a slight ambiguity here.

Redirect examination.

By Mr. Greenberg:

Q. And did the \$300 estimate that you gave include in your mind salaries of yourself and your staff?

A. No, no, it did not.

Mr. Greenberg: All right.

The Court: You may step down, Mr. Frame. Thank you.

(Witness excused.)

Mr. Pettit: Your Honor, the Government calls Mr. L. A. Carey to the stand.

[fol. 1420] The Court: Now what exhibit are you going to refer to?

Mr. Pettit: 445, your Honor.

LEE A. CAREY, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Carey, by whom are you employed?

A. Continental Can Company.

Q. How long have you been employed by the Continental Can Company?

A. Ten years.

Q. What position did you occupy in 1956, if you recall, sir?

A. In 1956 I was assistant products sales manager for beer and beverage cans.

Q. What were your responsibilities in that position?

A. They were the same essentially as those of the products sales manager, namely, to develop the programs for sale of beer and beverage cans; to assist in the promotion of them and to assist in the establishment of the policy concerning their sale.

[fol. 1421] Mr. Pettit: Your Honor, we have a stipulation concerning this document, which states that Mr. Carey received document 445.

The Court: He received it.

Mr. Pettit: Received it.

Q. Do you recall receiving this document, Mr. Carey?

A. Yes.

The Court: Is 445 still for identification?

Mr. Pettit: Yes, sir, for identification.

Q. Do you recall—perhaps I should show this to you again.

The Court: Just a minute, please.

All right.

Q. Do you recall, Mr. Carey, what use if any you made of this document after receiving it?

A. Well, we used it to add to our information as to the success or lack of success of a competitive can.

Q. You said you were involved in products sales; is that correct?

A. That is correct.

Q. Would you use it in any way in promoting sales of Continental Can's containers?

[fol. 1422] A. No.

Q. Not directly, anyway?

A. Not even indirectly.

Q. Did you from time to time receive letters or studies of this type from the commercial sales department?

A. Yes, sir.

Q. Do you have any idea of the distribution of this document, to whom was this document sent, if you know?

A. Well, I can recall it was addressed to Mr. Buckley, and that copies came to me, I believe Mr. Neuman, Mr. Fisher. I don't recall who else.

Mr. Pettit: Your Honor, the Government is not going to offer this document at this time.

The Court: All right.

Mr. Pettit: That is all I have.

The Court: Do you want to examine about it?

Mr. Hughes: You say you are not going to offer it?

Mr. Pettit: Not going to at this time.

Mr. Hughes: All right.

[fol. 1423] Cross-examination.

By Mr. Hughes:

Q. Mr. Carey, can you tell us what you did before you were assistant production sales manager for Continental Can?

A. I was assistant to the general manager of sales of the metal division prior to that, and prior to that I had been supervisor of sales training for the Continental Can Company.

Q. And about how long have you been connected with Continental Can Company?

A. Since 1950.

Q. And prior to that what was your business experience?

A. I was employed by a brewery in Albany, New York, which is now part of the Schaefer Brewing Company, from 1940 until 1950, except for four years during the Service.

[fol. 1424] Q. And in what capacities were you employed with that brewery?

A. I was a trainee for one year working in the plant in 1940, and subsequently I was a salesman for a year, a district sales manager for two years, and purchasing agent for two years.

Q. Now at the time that this document, 445 for identification, came into existence, who was the production sales manager?

A. The products sales manager.

Q. Who was the products sales manager?

A. The products sales manager was Mr. Buckley.

Q. And you were his assistant?

A. I was his assistant.

Q. Did either Mr. Buckley as products sales manager or you as his assistant have any authority over the salesmen themselves?

A. No, sir, we had strictly staff responsibilities.

Q. And from your standpoint and your department's standpoint, to get any sort of activity out of the salesmen you more or less had to promote ideas to these salesmen, is that correct?

A. That is correct.

Q. Was that one of the important functions of your department? [fol. 1425]

A. Yes, sir.

Q. To assemble and provide material for the salesmen to generate their interest in those particular sales ideas?

A. Yes, sir.

Q. Returning to document G-445, you did not prepare this document, did you?

A. No, sir.

Q. Do you know who did prepare the document?

A. My recollection is that Mr. Way of the Commercial Research Department prepared it.

Q. Do you know whether he personally prepared it or whether other people under his supervision prepared it?

Mr. Greenberg: Your Honor, Mr. Way will appear as a witness.

The Court: That may be but he is asking this witness at the moment.

A. My understanding is that Mr. Way himself prepared it.

Q. Did this document have any circulation outside of the company, so far as you know?

A. No, sir.

Q. To your knowledge, do you know what circulation it [fol. 1426] had beyond the fact that a copy came to you?

A. No, sir.

Q. And do you know or have you any knowledge as to

how, in fact, the material summarized in the report was assembled and prepared?

A. Yes, sir.

Q. You do know that, you say?

A. By assembled, do you mean collected?

Q. Collected or collated, yes.

A. Yes, I do.

Q. And what is the extent of your knowledge on that subject?

A. I know that a number of sales trainees were sent to a large number of retail stores in the Chicago area and made inquiries in those stores pertaining to the one-way—to the quart can.

Q. And were the results of those inquiries then compiled in the form of this document which is G-445 for identification?

A. Yes, sir.

Q. At the time that this document was prepared you were not an officer or director of the corporation, were you?

A. No, sir.

[fol. 1427] Q. At that time you had no power to commit the corporation?

A. No, sir.

Q. Did you make policy for the corporation at that time?

A. No, sir.

Q. Did you take any action on this document G-445 for identification?

A. No, sir.

Q. Do you know whether anybody else took any action on it?

A. I know that no action was taken. The results did not call for any action.

Q. Tell me, if you know; what was the purpose of this document? What is it all about?

A. Well, the Continental Can Company for a great many years had produced a cap-sealed quart beer can. About the time of this document we were on the verge of abandoning production of this can because of a lack of market for it.

To our surprise at this time a major brewer, Pabst, came on the market with a cap-seal quart can similar to but somewhat different from the one that we had been on the market with for a good many years. In order to ascertain that we

[fol. 1428] were not making a mistake in abandoning the manufacture of our cap-sealed quart can at this point, we naturally wanted to determine exactly what success the new cap-sealed can being produced by our competitor's can manufacturer was going to have.

We requested someone from the research department to investigate at least one market in order to help us arrive at a decision as to the probable success of this package.

Insofar as you were concerned, what decision did you personally arrive at?

A. I myself felt that the quart can did not have a place in the market, and, as a matter of fact, it was at my request that this survey was made in order to confirm this belief on my part.

Q. And did Continental Can cease to make the cone cans for beer—

A. It did cease to make the cone-cap can for beer.

Q. Will you tell us about when they ceased to make it?

A. I believe we actually went out of manufacture in 1958. We would have gone out sooner but we had to make switch-overs.

[fol. 1429] Q. Do you know whether American Can now makes a cone-top quart can?

A. To the best of my knowledge, they do not.

Mr. Hughes: Well, your Honor, I object to it.

The Court: It has not been offered yet.

Mr. Hughes: Excuse me.

The Court: You may step down.

Mr. Pettit: I have a further question.

The Court: All right.

Redirect examination.

By Mr. Pettit:

Q. You said that you requested this survey to be made?

A. Yes, sir.

Q. I am not sure, but did you say that surveys of this type often came to you in your position; not on the same subject, but of this general type?

A. We regularly received information from the Commercial Research Department.

Mr. Pettit: Thank you, that is all I have.

The Court: All right. Thank you, you may step down.

(Witness excused.)

The Court: Who is next?

Mr. McManus: Mr. Johnson.

[fol. 1430] DELBERT JOHNSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, to assist both your Honor and the defendant in the order in which I expect to take these up, 687 through 693 will be the first group because they are quite similar.

The Court: All right, go ahead, Mr. McManus.

Direct examination.

By Mr. McManus:

Q. By whom are you presently employed?

A. Continental Can Company.

Q. What is your present capacity or position with the Continental Can Company?

A. I am manager of advertising and sales promotion.

Q. Is that for the entire company?

A. Yes.

Q. How long have you held that position?

A. Since about 1948.

Q. And your duties in that position are the normal duties of advertising and sales promotion?

A. Generally speaking, yes.

The Court: Gentlemen, I have been thumbing through this material. It appears to contain figures having to do [fol. 1431] with cans for soft drinks. Have you any objection to this?

Mr. Hughes: Your Honor, there were some questions that I wanted to ask on the voir dire.

Mr. McManus: Suppose I offer it first, your Honor, and—

The Court: Yes, suppose you offer it. After all, here is the fellow, I take it, that has something to do with the preparation of this material. Did you?

The Witness: Yes.

The Court: All right, let Mr. Hughes go right ahead on the voir dire and see what develops.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Johnson, will you take G-687 for identification and will you tell his Honor what you know about this document and about how that document was prepared?

A. In a general sense?

Q. Yes.

A. This document has material in it that was supplied by an outside organization, the Advertising Distributors of America. They had been retained by Continental Can Company to gather such information. They, through their organization, they have a field organization, gathered this by [fol. 1432] their methods and passed it on to Continental. There were a series of such letters. We set up a mechanical method within the department whereby certain excerpts from these reports that they sent in, short ones, a few lines, were reproduced in this, and just got printed in this form.

Q. Did you hold the same position then that you hold now?

A. Yes, sir.

Q. And you were neither an officer or a director of the corporation at that time?

A. No, sir.

Q. You had no authority to commit the corporation?

A. No, sir.

Q. And you did not make any policy decisions for the corporation?

A. No, sir.

The Court: I take it that the rest of these, 687, 688, 689 and 690, were simple follow-ups of the first one?

The Witness: The same type.

The Court: The same type of material?

The Witness: And the same method.

Mr. Hughes: No objection, your Honor.
[fol. 1433] The Court: All right, received.

That is, 687 to 693, inclusive.

Mr. Hughes: May I just ask this one further question?

The Court: Of course.

Mr. Hughes: If I asked the same questions with reference to the succeeding exhibits, would your answers be the same?

The Witness: They would all be the same, exactly the same.

The Court: All right.

(Government's Exhibits 687 to 693 for identification received in evidence.)

Mr. McManus: Your Honor, the remaining documents are those that Mr. Johnson received, and I would like to ask very briefly regarding them, but I am not offering them at this time.

The Court: In other words, the balance of the documents you are examining him on but you are not offering at this moment?

Mr. McManus: That is right.

The Court: All right.

Are you taking these in the order that I have them, in numerical order?

Mr. McManus: Starting with 419 and going up.
[fol. 1434] The Court: All right.

Direct examination continued.

By Mr. McManus:

Q. Do you recognize this document?

A. Yes.

Q. And you received this document?

A. Yes.

Q. What did you do with the document when you received it?

A. Well, I glanced through it and forwarded it to our sales organization.

Q. You forwarded it to the sales organization of Continental Can Company?

A. Yes, the metal division.

Q. Was it a regular part of your duties to receive this type of survey and to forward it to the sales department?

A. I don't know exactly what you mean. I don't recall another survey like this.

Q. Was it your duty to receive surveys which you would forward to the sales department?

Mr. Hughes: I am sorry, I did not hear that.

Q. Was it your duty to receive surveys that were conducted by either the Continental Can people or others—

[fol. 1435] The Court: Just ask it this way: did this come to you in the course of your duties?

The Witness: Yes, this particular one did.

The Court: This one did?

The Witness: Yes, sir.

The Court: And in the course of your duties it was distributed in the manner that Mr. McManus asked you about?

The Witness: I would send this one on to our sales organization.

The Court: All right.

Mr. Hughes: Are you offering it?

Mr. McManus: No, we are not offering it.

Now these will be 589, 590 and 591.

Q. Do you recall receiving this document?

A. No, I don't.

Q. These are your initials?

A. They are.

Q. Is it normal for you in your position to receive a document of this type?

A. It wasn't functionally normal. I might have been on the mailing list, a long mailing list like this, but it had no functional meaning to me.

Q. Would your answers to 590 be the same?

[fol. 1436] A. Yes.

Q. If you were asked the same questions with respect to document No. 591—

The Court: Well, gentlemen, look. Here are some figures, and presumably they are figures that Continental Can had. I don't know, frankly, gentlemen, of what possible

significance this could have, unless you are putting this in—are you intending to offer this for the truth of the figures?

Mr. McManus: Yes, sir, we are. Your Honor, this particular document is also offered to show their concern, that is, on page 3 of 590, their concern for the competition that they are getting from glass. Page 3 is glass container industry beer bottle shipments versus Continental's beer container business.

The Court: I am frank to say to the Government that I do not know what possible significance this can have. Plainly, Continental Can was selling beer cans and it was concerned with beer sold in bottles. They very naturally would be. If that is all this is designed to show, it seems to me that we are putting in an awful lot of stuff to prove an awfully obvious fact which, it seems to me, has already been pretty well established, and indeed, I am sure that that is not denied by the defendant.

[fol. 1437] Mr. Hughes: That is right.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Up to now I was not sure of that, your Honor. I would be glad—

The Court: The defendant certainly does not deny that Continental was interested in the question of beer being sold in bottles rather than in cans.

They do not deny that, do they, Mr. Hughes?

Mr. Hughes: They do not, no.

Mr. McManus: Do they deny that they were concerned about the competition that they were getting?

The Court: Don't go into conclusory statements. You have got all you need to get on this.

Mr. McManus: Well, your Honor, I would like to at least offer these documents—

The Court: You can offer them, but I will tell you right now, Mr. McManus, that the odds against my reading them are simply enormous.

Mr. McManus: Even though, I will offer them at an appropriate time, your Honor.

The Court: Do you want to ask the witness anything about these?

Mr. Hughes: Your Honor, I would just like to have it [fol. 1438] clear on the record what the purpose of these documents are.

The Court: I think in each case, Mr. McManus, it would be helpful if you would state for the record, and very succinctly, the purpose of these documents.

Mr. McManus: As to 590, 591, 592 and 592, with which this witness is concerned, your Honor, we offer these documents for the truth of the matter contained therein, and also we offer them as evidence of the fact that Continental was concerned with the percentage of glass containers for beer, the percentage which they had, and the percentage of the over-all industry.

The Court: You are not offering them at this point?

Mr. McManus: No, sir. Your Honor asked me—

The Court: That is the purpose of it?

Mr. McManus: Yes.

The Court: Now we have some other documents here, have we?

Mr. McManus: Yes, sir.

The Court: All right.

Mr. McManus: 607 and 608—these are not being offered at this time, your Honor, but I would just like to ask the [fol. 1439] witness if he received them and what use he put of them.

The Court: All right, let us ask him about those.

Mr. McManus: 607, 608, 610 and 615.

Q. Do you recognize this one?

A. I have no recollection of having received this.

Q. And of course, you do not recollect what you did with it if you don't know whether you received it?

A. I am sure I did nothing with it. It is not information that functionally would have any value to me for any purpose.

Q. That is your name on this?

A. That is my name. Why I was on this list I do not know.

Q. You do not deny that you received it, do you?

A. Well—

Q. You don't know?

A. I don't know, my secretary may have received it.

Q. Would that be true of 608?

A. Yes.

Q. 610?

[fol. 1440] A. Yes.

Q. 615?

A. Yes.

Q. You don't recall receiving any of these?

A. No.

Mr. McManus: That is all I have of this witness, your Honor.

Mr. Greenberg: Your Honor, the next witness—

The Court: Wait a minute. We haven't had these offered yet.

Mr. McManus: They are not being offered. We are finished with the witness.

The Court: I take it, Mr. Hughes, that you have no questions at this point?

Mr. Hughes: No, sir, I do not.

The Court: Thank you, Mr. Johnson, you may step down.

(Witness excused.)

The Court: Now the next witness.

Mr. Greenberg: The next witness is Mr. Muth.

[fol. 1441] GEORGE H. MUTH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Mr. Hughes has requested that we wait a moment until he gets his copies of the exhibits.

The Court: All right, and I have got to get mine, too.

(Pause.)

Mr. Greenberg: Your Honor, before I commence with the examination of Mr. Muth, there are a number of documents involved here, and they break down into two groups, one group where he was the author or signed the documents, and the other where he received a copy.

Direct examination.

By Mr. Greenberg:

Q. Sir, where do you reside?

A. New York City.

Q. And what is your present position?

A. Assistant to the executive vice-president of the Metals Division.

Q. Of what company?

A. Continental Can Company.

Q. How long have you held that position?

A. About 12 years, I would say.

Q. And what are your duties and responsibilities?

[fol. 1442] A. Well, I have a staff job and I usually handle special assignments given to me by the executive vice-president.

Q. You say you have a staff job. What does that mean?

A. The executive vice-president has a number of assistants, and some people handle accounting matters, some handle manufacturing matters, and some handle sales matters. And I handle a sort of variety of types of matters.

Q. Do you have any liaison with other departments in the organization?

A. Well, indirectly.

Q. Well, what do you mean?

A. Well, what other departments? Do you mean within the metal division or—

Q. First in the metal division and then any others outside of that.

A. On the outside, no, that is, with other container groups, but with something that happens to come up that has to do with one of the metal groups, I would.

Q. I show you Government's Exhibit 415-C and ask you if you recognize it?

[fol. 1443] Mr. Hughes: Your Honor, just one moment. 415-C was not on the list and I have got to find it.

(Short pause.)

Q. Do you recognize that?

A. Yes, I do.

Q. You were the author of this document?

A. Well, I either was or someone in the department was and I signed it.

Q. Do you know what distribution was made of this?

A. I would say very limited, just to those people who are shown there.

Q. In 1947, at the time this document was written, what was your position with the company?

A. I was manager of what we called the commercial research department, which prior to that Mr. Frame had been the manager of that department.

Q. Did that department have the same functions as Mr. Frame described?

A. Yes.

Q. Can you identify the persons who received copies of this document?

A. Mr. Pierson, I think at that time did quite a little of our development work; and Mr. Fogarty—

[fol. 1444] Q. What do you mean by development work?

A. Well, they developed the equipment and also new packages. Mr. Fogarty I think at that time was one of our top sales people. And I think Mr. Brachle was either in charge of general line can sales or he was a products sales manager handling baby foods.

Mr. Greenberg: Your Honor, may I proceed to cover all of the—

The Court: Before you do that, I would like to know what the purpose of these is. I take it that these documents all relate pretty much to one subject, do they or not? What is the purpose, let us say, of 415-C?

Mr. Greenberg: Your Honor, again we of course offer the document on general grounds. We offer it for the truth of the facts stated therein, but I believe the document also shows the concern by Continental with competition from glass containers in the baby food field. It shows the liaison of the departments and I believe that this, with other documents, shows that this was the context within which Continental Can operated.

Mr. Hughes: Your Honor, we object to it.

[fol. 1445] Mr. Greenberg: I have not offered it yet?

The Court: He is not offering it yet.

Mr. Hughes: Oh, I beg your pardon.

Mr. Greenberg: I wanted to ask your Honor, do you want me to offer these documents one at a time or go through the list where the witness has authored or signed the document and then—

The Court: I think that is the way to do it unless Mr. Hughes would prefer to do it the other way.

Do you want to make the offer now?

Mr. Greenberg: I don't care.

The Court: Which would you prefer, Mr. Hughes?

Mr. Hughes: It makes no difference.

The Court: All right, this has been offered.

Mr. Hughes: It has been offered?

The Court: Is that right, it is being offered?

Mr. Greenberg: Yes, the Government offers this document, G-415-C.

Mr. Hughes: Well, your Honor, I would like to ask Mr. Muth some questions.

The Court: You may.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, you are the author of this document, is [fol. 1446] that correct?

A. Yes, sir.

Q. And do you recall the sources of the information contained in this document?

A. Well, I don't know specifically but—

Mr. Greenberg: Have you read the document through?

The Witness: I scanned it; I just saw it.

Mr. Greenberg: Why don't you read it through?

The Court: Not at this point.

The Witness: I have a rather good idea as to why it was prepared. The market for baby foods is rather large, and this was in the metals division. I think we felt that there was a place in that market for the metal can, but due to a very strong, I wouldn't say consumer, but the retail buyer preference, for another type of container, we were trying to develop a can that would overcome some of the objections that they had to the metal can.

The Court: That is, the consumer appeal—

The Witness: The consumer appeal—

The Court: —that the glass jar was supposed to have? [fol. 1447] The Witness: That is right. And these people for a number of reasons preferred the glass jar, and we were trying to develop a metal can that would overcome some of those objections, and this article here I think you will find listed what the objections are and then what we did to try to overcome them.

Mr. Greenberg: In the document there is a reference here—

The Court: Wait a minute. Mr. Hughes is examining and is in the middle of his voir dire.

Mr. Greenberg: I am sorry.

The Court: Maybe it would be as well, Mr. Greenberg, if you would sit down while Mr. Hughes is conducting his voir dire.

Mr. Greenberg: All right, your Honor.

By Mr. Hughes:

Q. Does that represent your explanation of the purpose of the document?

A. Yes, sir. We were trying to develop a package that would overcome these consumer objections and which they had a great deal of trouble in overcoming.

Q. Would you tell us the source of the information that went into this document?

[fol. 1448] A. Well, I think part of it would come from salesmen who called on baby food packers, and I think some of it would come from the type of survey that Mr. Frame mentioned here previously, where someone would ask a mother why did she prefer one container as against the other.

Q. Would you say that this information was picked up from random sources?

A. I would say over a period of time we developed that information.

Q. Did this document receive any circulation outside of the company, so far as you know?

A. No, it just went to a very limited group.

Q. At the time that this document was prepared, were you an officer or director of the corporation?

A. No, I wasn't.

Q. Did you have power to bind the corporation?

A. No.

Q. Did you make policy decisions for the corporation?

A. No, I didn't.

[fol. 1449] Mr. Hughes: I object to this, your Honor, in so far as it is offered for the truth of the facts that are purported to be stated. I understood there were two purposes of the offer, one, to show this awareness, and the other, as proof of the fact or alleged facts in the document. It is a document that contains merely opinion, conjecture, and it seems——

The Court: Well, it is the opinion, such as it is, of employees of Continental. I will overrule your objection.

Mr. Hughes: All right.

(Government's Exhibit 415-C for identification received in evidence.)

The Court: The next is 434, is it, Mr. Greenberg?

Mr. Greenberg: Yes, your Honor. I think perhaps we may be able——

Mr. Hughes: Your Honor, do I understand you are taking that document on both grounds on which it was offered? In other words, as I understand it, it was offered——

The Court: Mr. Hughes, I am going to take the document. [fol. 1450] Mr. Hughes: Yes, sir.

The Court: If there are limitations to be placed upon it, there is no use my going into highly technical distinctions at this point when the document may be merely one in a long chain in which we are never going to refer to these facts of the survey. Maybe we are and maybe we aren't. I will determine what the document is to be used for when I get to whatever practical use it is to be put.

By Mr. Greenberg:

Q. I show you G-434 marked for identification and ask you if you recognize it?

A. Yes, I do.

Q. And you read this document?

A. Well, that was an abstract which I made from an article that appeared in one of the magazines, and it was a

serial article, and in order to save time, and so various people might be interested to get a copy of the information, why, I just abstracted that out of the magazine.

Q. What was your position at that time, June 4, 1947?

A. Manager of this commercial research department.

Q. And what distribution was made of this document? [fol. 1451] A. Well, I don't know offhand.

The Court: Isn't there a stipulation as to the distribution of this, or not?

Mr. Hughes: Just a minute.

The Court: There is no distribution stipulated?

Mr. Johnson: No, there is no distribution stipulated.

The Court: What is that?

Mr. Johnson: There is no distribution stipulated.

Mr. Greenberg: The only stipulation we have, your Honor, is that it was made in the course of his work.

Q. Do you recall distribution of this document?

A. No, I don't.

Q. You do not recall?

A. No.

Q. I show you G-435.

Mr. Hughes: Excuse me. Are you offering it?

The Court: What is the purpose of this?

Mr. Greenberg: Your Honor, the other two documents are intermittently connected with this. We can save some [fol. 1452] time.

The Court: All right, let's have it.

Q. I show you G-435; do you recognize it?

A. That is a continuance of the same article.

Q. And do you recall the distribution?

A. No, I don't.

By the Court:

Q. Have you got the same answers with respect to that as with respect to the previous one?

A. Yes, sir.

Q. Is 436 a continuation of the same article? Take a look at 436.

A. No, that is a different article.

Q. That is a different article?

A. That is a different article, yes, sir.

Mr. Greenberg: I now offer G-434 and G-435 into evidence.

The Court: All right.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, do I understand that G-434 is merely your summary of an article that appeared in a magazine?

A. Yes, it is.

Q. And G-435 is a further summary of that same article?

[fol. 1453] A. As I remember it, there were two—I don't recollect.

Mr. Greenberg: Better look at it again.

A. Yes; both. This one is sort of a continuation of the same article.

Mr. Hughes: Well, your Honor, I object to this. I don't see what possible probative value there is in Mr. Muth's summary of a magazine article.

Mr. Greenberg: I have one further question, your Honor.

The Court: Let's have the further question.

By Mr. Greenberg:

Q. Referring to 435, which you said was connected with 434, I direct your attention to page 4, which contains a reference to copies having been sent to Mr. Rosenbauer and Mr. Wojtul. Who was Mr. Wojtul at that time, that was June 10, 1947, around that time?

A. I am not sure what Mr. Wojtul's job was at that particular time. I think he was in the—I think he was in one—he was one of our sales managers.

Q. What is Mr. Wojtul's position at the present time? [fol. 1454] A. Vice-president, fiber drum division.

Q. And Mr. Rosenbauer, do you recall what position he was in in that period of time?

A. I think he was one of our products sales managers, about that time.

Mr. Greenberg: Well, I offer the document.

The Court: For what purpose?

Mr. Greenberg: I offer it generally for the truth of the facts contained in it.

The Court: No, this I will not take for the truth of the facts contained therein. I will take this merely to show—though frankly, it seems to me to be cluttering up the record to a very marked degree, I will take it merely for the purpose of showing that Mr. Muth made an abstract of an article, to which this refers, and gave it to two other people in the mills.

Mr. Greenberg: Your Honor, may I have just a moment?

G-435 has a series of opening paragraphs which discuss various reasons why they did this. We offer the document for the truth of the facts stated therein, to the extent that this was said and done by this individual.

[fol. 1455] The Court: No.

Mr. Hughes: I don't follow that.

The Court: As I understand it, he has testified that this whole thing is merely a summary of an article in a magazine.

Mr. Greenberg: Right, but G-435 indicates to some extent what he reviewed and "The entire report is covered in a special abstract dated June 4th, compiled by this department. We have, in addition, prepared the following data from the report, which we believe will give you the most important comparative figures between cans and bottles."

So apparently they thought these figures were accurate, your Honor.

Mr. Hughes: Well, now, your Honor, I object to testimony from Mr. Greenberg.

The Court: Well, I don't understand, if this is all an abstract of an article in the American Brewer, what you say can possibly be true.

Mr. Greenberg: Well, perhaps, your Honor—

The Court: It is either an abstract of an article or it isn't.

Mr. Greenberg: Well, we think it fits into the picture and we think that the American Brewer is a reliable journal, [fol. 1456] and even if it were not, the fact that they relied upon their statistics has some weight here.

The Court: Well, I don't see any indication on this document and on the evidence that has been given that anybody relied on anything. The only evidence is that there is an article in the American Brewer, digested by Mr. Muth and sent to two other people. If you want that in evidence, you can have it.

Mr. Hughes: Your Honor, I don't suppose that the statement of Government counsel that the Government's record is reliable has any weight.

The Court: No, we are not taking testimony of counsel. We haven't gotten to that point yet.

(Government's Exhibits 434 and 435 for identification received in evidence.)

By Mr. Greenberg:

Q. I show you G-436 and ask you to identify it. What is it?

A. Well, at that time I believe there were two different types of metal cans made, one called the flat top can one called a cone top can. And then there was—and those were one-trip containers. Then there was a one-trip bottle. And [fol. 1457] we frequently made comparisons between the cost of the three containers to keep in our records, because being head of the commercial research department I was supposed to know all about materials and packages and products that went into packages, and we liked to have something like that for reference purposes.

The Court: So you made this estimate.

The Witness: That's right.

The Court: All right, is there any objection?

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. Muth, did anybody tell you to do this?

A. Oh, no.

Q. You just did it on your own?

The Court: He did it on his own initiative.

A. That's right; I had ~~that~~ authority.

The Court: As a good commercial research man.

Q. And having done it, what did you do with the document?

A. Oh, just put it in the file and used it for reference purpose, in case someone would ask me a question, I could pull it out and show it to him.

Q. You don't recall giving it any circulation at all?

[fol. 1458] A. No.

Q. In or out of the company?

A. No.

The Court: What is the purpose of this?

Mr. Greenberg: Your Honor, I can just repeat our formula. We offer it for the truth of the facts stated therein, and also, it is part of the general overall background. It will fit into the framework once the document—

The Court: You will have an objection, Mr. Hughes, and I will take it on the theory that it is an estimate prepared, as it states, it is an estimate prepared by Mr. Muth of the research department as of that date.

Mr. Hughes: But not for the truth of anything that is in there.

The Court: No, it is an estimate he prepared. That is what it says, "Estimated delivered cost." It can't be more than an estimate. That is all it purports to be.

(Government's Exhibit 436 received in evidence.)

By Mr. Greenberg:

Q. For what period of time were you in charge of the commercial research department?

A. Well, I was in about two or three years.

Q. Well, what time period, from when to when?

A. From 1947 some time to maybe around 1949 or '50, something like that. I would say two or three years.

Q. I show you Government's Exhibit 592 and ask you if you can identify it?

A. Yes, I recognize this.

Q. What?

A. Yes, that's right. It was a bulletin issued regularly by my department.

The Court: The same is true of 593, is it, and 594 and 595? Is that true also?

Mr. Greenberg: Right through 597, your Honor.

The Court: Yes, through 597. They are all bulletins issued by your department on the dates that are shown there; is that right?

The Witness: Yes, sir.

The Court: And they have to deal with beer sales and treasury figures on beer sales; is that right?

The Witness: Well, they were taken either from the Government figures or the Container Association, but they were taken from public figures and consolidated.

The Court: All right.

Mr. Greenberg: Now, your Honor, we have a long line of recipients of each of these documents.

The Court: Is there a stipulation about distribution of these documents?

Mr. Johnson: Which numbers are they?

The Court: 592 through 597, inclusive.

Mr. Johnson: Yes, sir; with respect to each of them there is a stipulation that they were distributed to the persons named.

The Court: All right.

Mr. Greenberg: Your Honor, may I very respectfully make a suggestion at this point?

The Court: Yes.

Mr. Greenberg: They have stipulated that these people received copies of these exhibits. However, at that time, or going back to that time, there is no stipulation as to what positions these people held. Now surely Continental Can knows that, and if we can get an identification of—

The Court: Well, I will instruct Continental Can to have

[fol. 1461] available a list of appropriate people, so they can state what position they held at any given time between this period.

Mr. Johnson: Over what period of time?

The Court: Well, I don't know, Mr. Johnson. You have the dates. I haven't got the complete set of dates. But when you refer to a distribution list of a document, to a lot of names, I think I will require you to supply at some point the positions that the people on that distribution list held on that particular date.

Mr. Johnson: We will be glad to do that, your Honor, to the extent that it is available. Many of these documents are old, and in the course of preparing the stipulation which, as you realize, is a terrific document, we have spent a great amount of time working over old reorganization tables and old organization charts, in an effort to find who occupied what position back in 1945, and this document is '48, and in many cases it is literally impossible to do more than ascertain that they were employees.

The Court: Well, do the best you can. It doesn't seem to me that it is of enormous significance here. For instance, [fol. 1462] here is a distribution that I figured of about 25 names. I don't think it is necessary to identify each one of those 25. If you identify five names and say all the rest of them were employees, it seems to me quite sufficient. Otherwise we are getting into irrelevant minutiae that doesn't mean anything.

Mr. Johnson: With respect to this particular group, I believe that in each case it is indicated that they were distributed to, amongst others, defendant's district sales managers and district credit managers.

The Court: Yes.

Mr. Greenberg: Well, at the bottom is a list of the parties who received this document.

The Court: I am talking about identification of names. Well, now, is it of any significance to you? It may be to you, but I doubt very seriously that it would be to me, to identify who all these thirty people were.

Mr. McManus: Your Honor, I think it would be helpful if maybe we knew, as you say, perhaps four or five of the top names on the list, just so we will know it wasn't distributed to a janitor or something.

The Court: Was this distributed to any janitors?

[fol. 1463] The Witness: I hope not.

The Court: I presume that it was distributed to a variety of employees.

Mr. McManus: Or officers.

The Court: Employees of the company, having to do with sales or sales promotion.

Is that right, sir?

The Witness: Well, looking at this, your Honor, there are a number of people on the list. Frankly, I don't know why they are on here, because I see Mr. Schrader was a purchasing agent; a Mr. Niederhauser and Mr. Lacke were industrial relations people; this Mr. Alexander was another purchasing agent. Mr. Barry was a comptroller. Frankly, if we did it over again, I am sure the list would be smaller.

Mr. Greenberg: Your Honor, I could think of another way of doing this. If they can interview or talk to these various witnesses, who obviously can identify the recipients of these documents, and as to those they cannot determine from their records, get his recollection, that might help.

The Court: No, no.

[fol. 1464] Now, Mr. Greenberg, it seems to me that we have all the evidence that anybody can conceivably need with respect to the distribution of this document. What more you can need than this and what possible effect it should have on this case if you prove that Mr. Eggers held position A rather than position B, is just beyond me.

Mr. Greenberg: Well, I think before we have completed this case—

The Court: Well, I am going to say, you offer this with the evidence you have got. I am not going to take any more about it on the distribution. We have got more than we need.

Mr. Greenberg: Do I understand, your Honor—

The Court: The rest, I am ruling now, is irrelevant minutiae which I am not going to take.

Mr. Greenberg: I just want to understand your Honor's ruling. You do not want me to inquire as to what positions these various people held?

The Court: No, I won't take it; I won't permit you to inquire.

Mr. Greenberg: All right.

The Court: Now, you offer these?

Mr. Greenberg: We offer 592, 593, 594, 595, 596 and 597 [fol. 1465] into evidence.

The Court: Have you got any objection?

Mr. Hughes: No objection.

The Court: All right, they may go in.

(Government's Exhibits 592 through 597, inclusive, received in evidence.)

Mr. Greenberg: Your Honor, the remaining documents are copies which refer to copies having been received by the witness.

The Court: Well, do they show that he is on the distribution list or not?

Mr. Greenberg: We believe it does, your Honor.

The Court: Well, if it shows he is on the distribution list, haven't they stipulated that the people on the distribution list got the copies?

Mr. Greenberg: Let me check that, your Honor. We have had so many stipulations and answers to request to admit, I am not certain. I would like to check it for a moment.

Mr. Hughes: What is the number?

Mr. Greenberg: 400-A; 438; 439, 489, 490 and 491.

The Court: This is addressed to Mr. G. H. Muth. Isn't [fol. 1466] it stipulated that where a memorandum is addressed to somebody, he got it?

Mr. Hughes: Yes, sir.

Mr. Johnson: In 400-A it is. I will check the rest of it in a moment.

Mr. Greenberg: Your Honor, the purpose for going through the documents which the witness received, and to identify the persons who received the documents was to show the liaison, the connection between these various departments. Now, it may be Mr. Wojtul was head of a particular department which had not been mentioned heretofore.

The Court: Let me ask this witness a couple of questions.

By the Court:

Q. Now, your principal work had to do with various aspects of sales and research concerning sales; is that right?

A. Yes, I would say so.

Q. That has happened since 1947, when you presumably were on the list to receive this memorandum on competition, glass versus tin; is that right?

A. Yes.

Q. Now, isn't it the fact that the various departments [fol. 1467] or divisions or bureaus of Continental, concerned with metal sales, maintain liaison with one another in exchange information?

A. I would say so, yes, sir.

Q. That would be the way that any normal business would run under those circumstances, wouldn't it?

A. Yes, your Honor.

The Court: What more do you want?

Mr. Greenberg: Your Honor, that is fine, but I would ask just this one question:

That we still have Continental Can make its best efforts to identify the recipients of each of these documents.

The Court: No, I don't see any purpose to that. I am not going to make that direction at this time.

Mr. Greenberg: All right.

The Court: Now, what do you want to do about 400-A? Do you offer it?

Mr. Greenberg: No, your Honor.

The Court: You are not offering it?

Mr. Greenberg: No.

The Court: What about the other ones we have here? 438 is next.

[fol. 1468] Mr. Greenberg: We are not offering any of the documents which were received as copies by the witness, and that encompasses 400-A, 438, 439, 589, 590 and 591, although we wish to point out again that the answers to the requests to admit, admit that the writer or author made this document in the course of his work.

The Court: All right. Well, I see Mr. Muth's name is on 438, the distribution list. Doesn't appear to be on 439.

Show him 439 and ask him if he remembers getting the memorandum to all district sales managers.

Mr. Greenberg: It is at the bottom, your Honor, the first column, underneath.

The Court: All right, 439.

Mr. Greenberg: 589 is the next one. Yes, his name is mentioned.

590, his name was on.

The Court: 590, is he on?

Mr. Greenberg: Yes, he was on that list for distribution.

The Court: 591?

Mr. Greenberg: He was on that list as well, your Honor. [fols. 1469-1476] The Court: So that he was on all the lists, and the stipulation already admits that he got them.

Anything further from Mr. Muth?

Mr. Greenberg: I have no further questions.

Mr. Hughes: These haven't been offered, as I understand it.

The Court: No.

Mr. Hughes: No questions.

The Court: You may step down, sir. Thank you.

(Witness excused.)

[fol. 1477] SAMUEL B. DE MERELL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. By whom are you employed, Mr. DeMerell?

A. Anchor Hocking Glass Corporation.

Q. And in what capacity are you with that company?

A. I am a vice-president in charge of our so-called package division.

Q. For how long a period of time have you had that position?

The Court: Incidentally, before you go ahead, I take it that Mr. Jacobs' appearance on behalf of Anchor Hocking will be renoted; is that correct?

Mr. Jacobs: Correct, sir.

[fol. 1478] The Court: Or let's say, on behalf of the witness.

A. In that exact position since 1947.

Q. And how long have you been employed by Anchor Hocking or its predecessor company?

A. About 35 years.

Q. And could you tell us what are your duties as vice-president in charge of the packaging division?

A. Chiefly and broadly, to oversee the various elements having to do with distribution of our products, containers included.

Q. Is it limited to glass containers and closures or closing machinery?

A. Yes.

Q. Does it cover your pressed glass part, pressed-ware?

A. No.

By the Court:

Q. Let me ask you this, sir: what relation does your function bear to the general sales function of the company?

A. I think you would say I am in supervisory charge of all the sales functions of the package end of our business.

The Court: I see.

[fol. 1479] By Mr. McManus:

Q. Now, in your capacity, have you become familiar with the vacuum-type machines for capping glass containers with vacuum closures?

A. In a general way, yes.

The Court: You are not an engineer, I take it?

The Witness: I am not.

Q. Are you familiar with the line speeds at which these machines are able to operate?

A. Not in detail. I am familiar, again, in sort of a general way.

The Court: Just a moment, again, Mr. DeMerell.

By the Court:

Q. Did I understand you to say that the Anchor Hocking sells packaging machines, capping, capping machinery?

A. For the most part, leases it.

Q. Leases it.

A. Yes.

Q. Now, does your function have anything to do with packaging machinery, that is, the leasing of the packaging machinery and the efforts to obtain such leases?

[fol. 1480] A. Yes, because on our sales end the same personnel in general would be promoting the sale of both glass containers and closures.

Q. And machinery, also?

A. And machinery to accompany them.

The Court: All right.

By Mr. McManus:

Q. And in this sales capacity have you become familiar with the maximum speeds at which your machinery will operate?

A. Again in a general or approximate manner.

Q. What is your largest machine?

A. It is machinery referred to as a 16-head rotary.

Q. And at what speeds is that machine designed to operate?

A. I can tell you it has operated at speeds up to in the vicinity of 700, 750 a minute.

The Court: When you say "750 a minute," you mean, I take it, turning out 750 containers?

The Witness: Yes.

The Court: I mean glass containers?

The Witness: Yes, that's right.

Q. Now, could you tell me, this 16-head rotary type machine [fol. 1481] chine, does that cap 16 jars at one time or more?

A. Yes. That is the minimum. In the case of some small jars we run dual heads and accommodate 32 at a time.

Q. And when you are talking about the machine running at 700 a minute or 750, it is when it is operated in a dual-head capacity?

A. Yes.

Q. If you run your machine—well, would a pint jar be able to fit under the dual heads?

A. I can't answer that positively, but I think it is a little beyond the limit for the machine as it is now constructed.

Q. So in running it for pints or larger, what would be the speed of the machine, approximately?

A. Well, to use a figure relative to the 750, previously referred to, I would estimate 350 or 400 a minute.

[fol. 1482] Q. Now, in your sales capacity you are familiar, of course, with the prices that your company sells its glass containers for?

A. In general.

Q. And do you necessarily also become in a general way familiar with what others are selling glass containers?

A. Yes.

Q. Since 1955 have there been any increases in the price of glass containers?

A. Yes.

Q. And these increases, in effect, have been general increases?

A. I wouldn't say that. I don't know as I can say that they have been general. I don't know for sure whether they are 100 per cent general, but more or less general.

Q. I see. They are not just one item but they cover quite a number of items, is that right?

A. That is right.

Q. Since 1955 to date, would you be able to estimate the approximate percentage of increase of the cost of glass containers today than what it was in 1955?

A. I wouldn't try to give you that from memory, Mr. [fol. 1483] McManus.

Q. Would you be able to approximate the percentage of increase that would have taken place?

Mr. Hughes: I understood him to say that he could not do so.

The Court: That was my understanding.

Have you anything with you from which you could refresh your recollection, Mr. DeMerell, on that subject?

The Witness: No, I haven't. I don't know whether it would help, but I should add that there haven't been many

instances at all that I can think of in the past year and a half.

The Court: Then increases since 1955 were prior to that?

The Witness: Yes.

The Court: Has there been any softening in prices in that year and a half, would you say?

The Witness: I am afraid there has been some.

Q. Have there been any cost increases during that year and a half?

A. Yes, particularly labor.

Q. Primarily the labor cost?

[fol. 1484] A. That certainly is the broadest of cost increases that have taken place in the past year and a half. You are talking about the last year and a half?

Q. Yes, that is what we are talking about.

A. Yes.

Q. Your company, as testimony before has brought out, is a member of the Glass Container Manufacturers Institute, is that correct?

A. That is right.

Q. Do you normally attend any of these meetings as the representative of your company?

A. I do.

Q. Does Mr. Fisher, the president, attend these meetings?

A. Occasionally.

Q. But you normally attend much more than Mr. Fisher does?

A. Yes.

Q. For how long a period have you been attending these meetings?

A. Ever since it started.

Q. Are you a member of the board of trustees?

A. I am a member of the board of trustees.

[fol. 1485] Q. For how long a period have you been a member of the board of trustees?

A. About five years.

Q. And as such are you familiar with the way that dues are assessed to members?

A. Yes, maybe not in every detail but I am generally familiar.

Q. And what is the basis on which dues are assessed to members of the Institute?

A. Dues are based on a percentage, a rather small percentage of net dollar sales of the members.

Q. And the members report their dollar sales periodically?

A. Quarterly; in other words, we would report officially to the Institute the same dollar sales that we publish.

Q. Then your dues are assessed on a percentage of the dollar sales?

A. Yes.

Q. Are you presently a member of any of the committees of GCMI?

A. Oh, I can think of at least two offhand.

Q. What are they—

A. I believe that is all.

[fol. 1486] Q. What are these committees?

A. One that I serve on is the Government-Industry Relations Committee, and I serve on the Marketing Committee—Market Research and Development is the full name of it.

Q. How long have you been on the Market Research and Development Committee?

A. Oh, I think I have been sitting in on those meetings for something like six or seven years.

Q. Are you familiar with the various activities of that committee in so far as research, surveys and things of that nature?

A. Generally so.

Q. And for how long a period has GCMI been carrying out these types of programs?

A. I believe they started, oh, roughly about seven years ago. These have to do specifically with the committee we are talking about now?

Q. That is right.

A. They undoubtedly have been carrying on various surveys and so on.

Q. Are you familiar with how the program developed, that is, who initiated the program of this committee?

A. I have a general impression of it.

[fol. 1487] Mr. Hughes: Your Honor, I don't know what "impression" means, but it seems to me if it is just a general impression, that I will object to it.

The Court: Yes, I think that is right.

Q. Well, I asked you if you are familiar, but do you know of your own knowledge how the activities of research and promotion started in that committee?

A. I am trying again to answer that. The program was decided upon by a vote of the membership. I would say that the subject had been debated pro and con for several years prior to its adoption. In other words, it was no overnight inception.

Q. What was the purpose of initiating this program of surveys and research?

A. To promote the cause of the glass containers.

Q. And when the surveys were completed what use was made of them?

A. I would say the surveys were conducted for the purpose of collecting intelligence to better guide the campaign.

Mr. Hughes: I move to strike that out as not responsive.

The Court: I will let it stand.

Q. And the other word in the title is "development." [fol. 1488] What does that entail?

A. I would say that the word "development" refers to follow through on the research and the promotion and furthering the use of the glass package.

Q. And how would that be carried out?

The Court: I think this is what you are after:

If you know, Mr. DeMerell, what is done in general terms?

The Witness: There is considerable advertising.

The Court: In the first place, is there a staff that operates this program, a paid staff?

The Witness: Yes.

The Court: How big generally is the staff, five people, ten people, two people?

The Witness: I would say about six.

The Court: What does the staff do in general terms? I presume, incidentally, that what they do they do under the generalegis of the committee which blocks out the policy lines for them to follow, is that right?

The Witness: That is right. They try to administer the activities and the policy laid down by the committee.

[fol. 1489] The Court: What do they do?

The Witness: For example, they work with the selected advertising agency in guiding the work, the copy.

The Court: That is, copy of a campaign to promote the greater use of glass containers?

The Witness: Yes.

The Court: Sort of what we would call institutional advertising, is that right, or industry advertising?

The Witness: Well, I think both would be right.

The Court: Both would be?

The Witness: Yes. I might say, supplemented by additional advertising, additional bulletinizing of the retail trade and the packers—packers or bottlers—to tie them in with the consumer advertising.

[fol. 1490] Q. So the development is twofold, both to the ultimate user of the product that goes into glass containers, and to the packer or processor who will be using the glass container; is that correct?

A. Well, the effort is to tie it all together.

Q. I see. Now, you have an annual budget to carry out this campaign?

A. Yes.

Q. Do you ever have supplemental campaigns that do not come under your annual budget?

A. We have had certain other efforts. I was trying to think whether we call them "supplemental" or "adjunctive" or some other word. I think that I would like to suggest that the head of our staff on that particular work could fit that together for you a little better than is possible for me to do.

Q. All right, sir. Now, you have told us generally about the GCMC Committee, how it operates. Referring specifically to your company, does your company receive copies of any of these research activities, copies of these research activities?

Mr. Hughes: Wait a minute. What is the form of that question?

Mr. McManus: I will withdraw that question.

[fol. 1491] Q. You explained to us the use that the company puts the research activities of the committee. You say they use it to guide their advertising. Does your company,

as such, or are these studies, research studies, available to them?

A. I believe they all are. I don't think of any exceptions.

The Court: Are the results of research, research projects, published in some sort of a bulletin or report?

The Witness: Yes, that is particularly true in connection with reports to the main committee.

The Court: Yes.

Q. And has your company ever had occasion, you or your company, ever had occasion to use these surveys?

The Court: Well, now, what are we talking about? Let's not use these terms, Mr. McManus. A survey is one thing, a report is another. Let's call them "reports" at this point.

Mr. McManus: All right, sir.

The Court: Then we will see what they consist of perhaps at some future time.

Q. Has your company ever had occasion to use these reports, or have you?

[fol. 1492] Mr. Hughes: Your Honor, I think it would be helpful if we could identify what he is talking about. Is he talking about a report by the staff to a committee? Is that the piece of paper?

The Court: That is as I understand it.

Mr. McManus: That is what we are referring to, yes.

The Court: Unless the committee, after getting the report from the staff, then proceeds to make a report of its own to the body as a whole.

Is that what happens?

The Witness: Yes, at least twice a year, formally, complete reports are given to the membership as a whole.

The Court: In other words, the reports of this special committee are distributed to the whole membership.

The Witness: Yes.

Q. And have you in your capacity of vice-president in charge of the packaging division made use of these reports?

The Court: Well, now, I don't know what "made use of" means. First of all, has he gotten the reports? The answer is, I take it, yes, you get the reports.

[fol. 1493] The Witness: Yes.

The Court: What do you do with them?

The Witness: We try to take advantage of the intelligence collected in guiding our actions. I find it a little difficult to tell you specifically just what we did with each piece of information.

The Court: In other words, you find the information of interest.

The Witness: Yes.

The Court: And at times helpful. Is that a fair summary?

The Witness: Yes.

Mr. McManus: That is all I have.

The Court: Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. DeMerell, would you say that virtually all of your activities with the company and the predecessor company have been in the sales end of the business?

A. Largely.

Q. Would you say that that has occupied the greater percentage of your time through the years?

A. Yes, that's right.

Q. Now, you have referred to these machines, which you have described as 16-head machines. These machines are the machines that put the cap on the container; is that [fol. 1494] correct?

A. Yes, sir.

Q. That is the kind of a machine you were talking about?

A. Correct.

Q. Now, you also make single-head machines, do you not?

A. Yes, for what we would call hand—

Q. For hand operation?

A. —hand operation.

Q. Yes, for commercial hand operation; is that right?

A. Well, you could call it that. That is a little debatable.

Q. Well, I call it that because I am thinking that the person to whom you sell it or lease it uses it for the purpose of selling his pack commercially; is that correct?

A. Well, to a limited extent it is.

Q. Yes. And it would naturally be a limited extent with a single-head operation; right?

A. Yes, sir.

Q. And those are the machines that cost about \$500, according to Mr. Fisher; is that correct?

A. Yes. I couldn't give you a better estimate.

[fol. 1495] Q. Now, between a single-head and a 16-head do you make any intermediate machines that have a different number of heads?

A. We have made and operated quite a number of 4-head machines.

Q. And—

A. (Continuing) We have had an 8-head machine, but have not supplied it to any particular extent.

Q. And is there anything between the 8-head and the 16-head?

A. Well, there has been, experimentally, but not in use.

The Court: Would you say your principal machine leased was a 16-head machine? That would be the bulk of the machinery?

The Witness: Yes, in that type of machinery.

Q. Well, in number of units, that is, in number of machines, the 16-head isn't the greater number of machines that you make, are they?

A. Well, we have had, Mr. Hughes, over a period of years a variety of machines that we have operated.

Q. But don't you have many more 4-headed machines out in the field than you have 16-head machines?

[fol. 1496] A. At one time we did. I don't think that is true today.

Q. Well, will you tell me about how many 16-headed machines you have out in the field today?

The Court: Yes, Mr. Jacobs?

Mr. Jacobs: Well, now, your Honor, again I wonder whether that would be getting into an area of internal operations which the company doesn't generally publish?

The Witness: It is not published information.

Mr. Jacobs: And I wonder if for present purposes it is really necessary to inquire into that phase in that manner?

Mr. Hughes: Well, I do want to find out what the wit-

ness's knowledge is as to whether at the present time they have more 4-headed machines out in the field than 16-headed machines.

Mr. McManus: Your Honor, he already answered that.

The Court: He said he didn't know.

Mr. McManus: No, my recollection is—

The Court: All right, let's find out.

Can you answer that question, Mr. Witness?

The Witness: My last comment was that there was a time when we had more 4-head machines than 16-head, but [fol. 1497] I did not believe that was true today.

The Court: I see.

Q. Well, are you saying that today there are more 16-head machines in the field than there are 4-heads?

A. Yes. I believe that is the case.

Q. When you say you believe that is the case, I mean, what is the basis for your statement?

A. Well, I would like to put that another way, that I am not in possession of exact figures on the subject.

Q. Well, then, if I may summarize it, you really don't know whether at the present time you have more 16-headed machines in the field than 4-headed machines; is that correct?

A. I don't object to its being put that way.

Q. And isn't it a fact that you simply don't know?

A. I believe what I have said amounts to that, yes.

Q. Now, what types of container are the 4-headed machines used for, wide-mouth, narrow-neck?

A. Wide-mouth.

Q. And will you tell me the approximate speed of the 4-head machine?

[fol. 1498] A. I'd say roughly from 125 to maybe as high as 200 a minute, depending upon the circumstances.

Q. And what is the approximate cost of a 4-headed machine?

A. I will estimate in the vicinity of \$750.

Q. Now, isn't it a fact that your 16-headed machines are used for the packaging or packing or closing of baby food containers?

A. They are used for the packing of baby foods.

Q. And isn't it a fact that that is the only present use of those 16-head machines?

A. It's the only present substantial use.

Q. Well, when you say "substantial," that indicates to me that there are other uses, and I ask you, can you presently think of any use to which a 16-head machine is being put other than to close baby food containers?

A. Well, you are not concerned with trials and experimentation and so forth, are you, Mr. Hughes?

Q. No, sir; I am talking about commercial use.

A. Well, again, this is—the baby foods covers the important commercial use.

Q. But I want to be sure that—I believe it covers the [fol. 1499] only commercial use, does it not?

A. Well, I think I should probably say here the questioning at this point is a little difficult, because it is confined to area. The rotary machine is not the only machine that we made, as I tried to indicate a few minutes ago. Over a period of years we have had a variety of machines.

Q. Yes, I understand that.

A. (Continuing) Now, we have a lot of machines in circulation other than the type you have been inquiring about.

Q. Yes, I'll come to that.

A. (Continuing) So I don't want the impression to stand that we only have one machine of any importance and used in only one line of any importance.

Q. And I don't want that impression to occur any more than you do if it shouldn't occur. But I am presently concentrating my questions on the 16-head machine, and my question is, isn't it a fact that the only present commercial use of the 16-head machine is for the closing of baby food jars?

A. I want to modify that a little, but I am willing to let that stand on that basis.

Q. Now, will you tell us what these other machines—
[fol. 1500] The Court: Let me ask you how much the 16-head machine cost?

Mr. Hughes: I think that is in the record, your Honor. Mr. Fisher testified to that.

The Witness: It is in the record. I believe it is about \$25,000.

The Court: All right.

Q. Now, you tell us that there are machines other than the single-head, the 4-head and the 16-head in the field; will you tell me what kinds of machines are in the field that we haven't alluded to, either in your direct or cross-examination, up to this point?

A. Well, the conversation up to this point had been confined to so-called rotary type machines.

Q. Yes.

A. We have had and still do have a number of so-called straight-line machines.

[fol. 1501] Q. Of your own design?

A. Yes.

Q. Are they of varying speeds?

A. Yes.

Q. Are you making that type of machine currently?

A. As I said, there have been several, but we are making a straight line machine currently.

Q. And can you give me the approximate speeds of that machine?

A. Well, the speeds will vary according to the sizes and circumstances and lines set up. I think I will estimate an average of 350 a minute.

Q. And will you give me the cost or approximate cost of that kind of a machine?

A. I think in the vicinity of \$10,000.

Q. Now referring again to the 16-head machine, is that machine ran for the pint sizes in actual commercial operation?

A. Well, it could be, Mr. Hughes, but we have already set it up so that the machine is pretty much confined to the baby food field, and the largest size there is eight ounces.

Q. Mr. DeMerell, do you sell your containers and closures to packers or users of containers who market their [fol. 1502] own products nationally, that is, through the United States?

A. Yes.

Q. Do you in practice sell to some of the plants of a national operator without selling to all of them?

A. Do you mean do we sell to some of the plants of a national operator without selling to all of the plants of the same operation?

Q. Yes, that's right.

A. No.

Mr. Hughes: I think that is all.

The Court: Is there anything further, Mr. McManus?

Mr. McManus: Yes, sir.

Redirect examination.

By Mr. McManus:

Q. Mr. DeMerell, you testified that your in-line capping machine speed was 350 a minute, is that correct?

A. I gave that as an average.

Q. And are these in-line machines sold for glass containers which would contain products other than baby foods?

A. Yes, they are offered for any number of products.

[fol. 1503] Q. Would they be able to cap a pint jar?

A. Yes.

Q. And would they be able to cap jars larger than a pint?

A. Yes.

Q. Approximately, if you can tell us, how big a jar could they cap?

A. The machines can be adjusted, I would say, to go up as high as a quart.

Q. And they may be adjusted to go down to eight ounces also?

A. Yes.

Q. Now I think there was one machine in which no line speed was given. You say that you had an eight-head rotary machine?

Mr. Hughes: I understood him to say that that was experimental.

The Court: He said that was experimental only; is that right?

The Witness: Well, yes, I think so but we proved it out and have not found any particular use for it.

The Court: There was no sales?

The Witness: That's right.

[fol. 1504] Mr. McManus: That is all I have.

Recross examination.

By Mr. Hughes:

Q. Referring back to the straight machines, you gave us an average speed, I think, of 350 a minute. Isn't that the gist of what you said to me?

A. Yes.

Q. And for certain containers the speeds would be faster and for certain containers the speeds would be slower, isn't that correct? In other words, you were giving me an average.

A. It would vary according to the sizes and lines set up.

Q. Would it be correct to say that, generally speaking, the bigger the size of the container the slower the speed?

A. Yes, that would be true.

Q. One final question: There was a reference made to GMCI surveys in your testimony. Do you remember that?

A. Yes.

Q. You did not either devise or execute or commit to writing any of the material in those surveys, did you?

A. You mean—

Q. You didn't conduct the surveys?

[fol. 1505] A. Whether I was the author or the company was the author?

Q. No; you personally had nothing to do with the devising or executing or carrying out of those surveys, is that right?

A. That's right.

Q. All you got was the report after it was completed?

A. That is right.

Mr. Hughes: That is all.

Mr. McManus: That is all.

The Court: Thank you, Mr. DeMerell, you may step down.

(Witness excused.)

The Court: Yes, Mr. Greenberg?

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Harmon who we expect will lay a foundation for introduction of a document which comes from a third party, namely, the Tariff Commission.

With your permission, your Honor, I will call Mr. Harmon.

The Court: All right, call Mr. Harmon.

Is this a document that the defendants have and which [fol. 1506] has been marked already?

Mr. Greenberg: It has not been marked, your Honor. It will be marked as a Government's exhibit.

The Government provided the defendants with the document last week and they have had a chance to peruse it and consider it.

The Court: Is there any objection to this document, before we start with the witness?

Mr. Handler: If your Honor please, we are going to operate under somewhat of a handicap. Mr. Greenberg gave us the document on Friday. We did not have a copy. We have had an opportunity of having one of our technical people study the document over the weekend—

The Court: Let me ask you this, before we put this witness on, is there any question of the authenticity of the document?

Mr. Handler: Well, it bears the imprint of the Tariff Commission.

The Court: There is no doubt that it was put out by the Tariff Commission?

Mr. Handler: We have no doubt about that.

The Court: What is the purpose of the witness?

[fol. 1507] Mr. Handler: But we have considerable doubt as to its competency, your Honor. There will be voir dire on competency.

The Court: Do both of you want to examine the witness on the voir dire?

Mr. Greenberg: Well, your Honor, I have just a few questions.

The Court: All right. All I was trying to get at is what the purpose of the witness was.

Very good, call Mr. Harmon.

Mr. Greenberg: Mr. Harmon, will you take the stand.

WILLIAM B. HARMON, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Would you please mark this a Government's Exhibit.

(Marked Government's Exhibit 365-A for identification.)

Direct examination.

By **Mr. Greenberg:**

Q. Where do you reside, sir?

A. Annapolis, Maryland.

Q. What is your present employment?

[fol. 1508] **A.** I am chief of the division of cargo data, Maritime Administration.

Q. Would you try to raise your voice?

The Court: United States Maritime Commission.

The Witness: Maritime Administration.

Q. Bringing you back to 1937, what was your position at that time?

A. I was distribution traffic analyst for the Tariff Commission.

Q. And just briefly what were your duties and responsibilities in that position?

A. In the assessment of—I mean, the compilation of tariff rates, import tariff rates, it was necessary to analyze the distribution of imports as compared with domestic production and to determine the principal points of competition.

Q. Sir, I show you Government's Exhibit 365 for identification and ask you if you recognize it.

A. I do.

Q. Were you in charge of compiling this document?

A. I was.

Q. Will you tell us how you compiled it?

A. We went to the principal producers of commodities in [fol. 1509] the United States and to the principal importers of quantities here in the United States. We asked them to report to the Tariff Commission on the packaging characteristics of the goods delivered. Upon receipt of such reports they were sent to Richmond, and under a WPA project

were tabulated, and then the tabulated data were returned to Washington where it was printed.

Mr. Greenberg: I have no further questions at this point, your Honor. I will offer the document, or if Mr. Hughes wishes to examine on the voir dire—

The Court: Offer the document, and before I pass on the offer I will hear Mr. Hughes.

I am going to take a brief recess at this point because I would like to look at the document so that I can follow the questions and know what this is about.

Mr. Greenberg: May I just say, your Honor, that we are merely going to offer two parts of the document.

The Court: Make the offer of the parts of the document that you intend to offer.

Mr. Greenberg: All right.

The Court: So that everybody knows and the record is [fol. 1510] clear on it.

Mr. Greenberg: Your Honor, the Government offers Exhibit 365 for identification into evidence, specifically that part of the document which is entitled "Chemicals, Oils and Paints," commencing at page 1 and terminating, I believe, at page 32, and the section entitled "Agricultural and Fishery, Commodities, Manufacturers Thereof, and Beverages," mentioned at page 97 and I believe terminating at page 134.

The Court: All right. We will take a brief recess. I want to look at this.

(Short recess.)

The Court: Mr. Harmon may resume the stand.

WILLIAM B. HARMON resumed.

COLLOQUY BETWEEN COURT AND COUNSEL RE DOCUMENT

Mr. Handler: If your Honor pleases—

The Court: Before we go ahead on this, Mr. Handler, suppose Mr. Greenberg tells us the purpose of this testimony or of this exhibit, what you intend to establish by it.

Mr. Greenberg: Your Honor, we believe that this exhibit

identifies the products and the types of containers which were being used in 1937, and both prior to that time, and certainly in the period following 1937, the glass container [fols. 1511-1512] manufacturers vigor, competitive vigor increased, and this exhibit indicates certain products which were serviced only by cans and certain products which were serviced only by glass containers during that period.

The Court: In the first place, as I read the document that is not what it purports to do. I reviewed this document briefly during the recess, and it does not appear to me to indicate that at all. As I understand it, it indicates that certain products were packaged in a certain way. It is not all inclusive in any sense of the word, and I don't think it purports to be and you do not claim it is, do you?

Mr. Greenberg: We do not deny, your Honor, that the Tariff Commission, although we have not questioned the witness along that line, did not or did interview every single packer in the country at that time, but the witness has testified that the principal packers were interviewed and that the containers that they used were noted in the data received and compiled in the exhibit.

[fol. 1513] The Court: Well, all right, I understand the purpose of it, but I want to be careful about these all-embracing claims, because as I read the introduction to the document itself it does not claim to be either complete or to be exclusive.

Mr. Greenberg: Your Honor, I think I did mislead you along that line. I don't think there has ever been a survey which has been exhaustive and complete, nor do I think it is possible for the Government to do so.

The Court: All right, go ahead, Mr. Handler?

Mr. Handler: If your Honor please, there are two preliminary points on which I should like clarification from Mr. Greenberg. In his proffer he said that he offered Exhibit 365 for identification and specifically, certain pages, pages 1 to 32 and 97 to 124. Now, do I understand the proffer is being limited to the pages specified, or is he endeavoring to offer the entire document in evidence?

Mr. Greenberg: Your Honor, as I told Mr. Handler last week, I am offering just two sections of the document, the one section which deals with packaging for chemicals, oils

[fol. 1514] and paints, and the other section which deals with food products.

The Court: Well, it seems to me, Mr. Greenberg, this is dependent on the view perhaps that the defendant takes, that without the introduction by way of qualification what this purports to do, the two tables are virtually meaningless.

Mr. Greenberg: Your Honor, we modify our proffer and offer the introduction as well.

The Court: Very well. But it is the introduction and the two tables that you referred to, pages 1 to 32, that is, arabic 1 to 32 as distinguished from Roman, and pages 97 to 134, arabic.

Mr. Greenberg: Chemicals, oils and paints, that section goes from page 1 to 131—

The Court: 131?

Mr. Greenberg: Through 31.

The Court: 31.

Mr. Greenberg: Right. And the other one runs from page 99 through and inclusive of page 134.

The Court: All right.

Mr. Handler: Now, I gather, your Honor, that by "introduction," Mr. Greenberg means Roman numerals I through XV?

[fol. 1515] Mr. Greenberg: That is correct, Mr. Handler.

Mr. Handler: Now, your Honor, this document was given to us on Friday. It was never listed in any of the documents at any time; it was not referred to in the amended witness list, and consequently we haven't had a chance to propound interrogatories to the Government.

Now, in the two sections that have been offered in evidence, we have a listing of several thousands of products. Manifestly, not all of these products are being relied upon by the Government, and I should like, therefore, to ask counsel to state on the record specifically which products in these two categories he is relying upon in support of his proffer which, as I understood it, is to show the changes that have occurred in packaging from 1937 down to date.

Mr. Greenberg: Your Honor, most respectfully, the Government will endeavor to do so. However, the voir dire on this occasion deals with either the competency of the witness or the document, and we say it is unrelated to the number of products that—

The Court: That entirely depends on what questions Mr. Handler desires to ask the witness. In other words, if Mr. Handler wants to pick out baked beans, for instance, to ask about, or iron filings to ask about, he wants to know whether this is something on which you rely.

[fol. 1516] Mr. Greenberg: Your Honor, we rely on both sections in their entirety.

Mr. Handler: Your Honor appreciates that that kind of a response could prolong the cross-examination for days, and we are dealing with thousands of products.

The Court: Let's get down to this: plainly, as far as I am concerned, so there will be no doubt about this, anything that isn't packaged in either glass containers or cans I have no interest in.

Mr. Greenberg: Your Honor, then we will agree—

The Court: Have you any interest in anything that isn't packaged in either glass containers or cans?

Mr. Greenberg: No, your Honor.

The Court: Of course there was no plastic at that time, I take it?

Mr. Greenberg: No, there was not.

The Court: All right.

Mr. Greenberg: We will agree then to offer only those products which have indications that they were packaged in either cans or glass containers, or both.

Mr. Handler: Your Honor, our interest may be of a wider [fol. 1517] dimension.

The Court: Well, all right, that is your privilege.

• Preliminary Cross-examination.

By Mr. Handler:

Q. Mr. Harmon, you referred on your direct examination to an inquiry that you made of various principal domestic producers and importers, did you not?

A. Yes, sir.

Q. Would you name the domestic producers and the domestic importers to whom your inquiry went?

A. No, sir. It is 23 years ago.

The Court: Now wait until he finishes his question.

A. Can I name them?

Q. That's right.

A. Not now I can't, no. I destroyed that list ten years ago.

Q. As of the moment you are unable to supply us with the names of the persons who were interrogated?

A. No, sir.

Q. Were your inquiries to these persons in writing or were they oral?

A. I don't understand you.

Q. Were the inquiries that you made of these persons in [fol. 1518] writing, or were they oral?

A. Personal visit.

Q. Did you make the personal visits?

A. I did.

Q. To all the hundreds of importers and manufacturers?

A. I spent about six months doing it, yes, sir.

Q. And what questions did you propound?

A. I asked them as to how they packaged their products. I asked them to give me the type of container: I asked for the weight, gross, net and tare.

The Court: What is tare?

The Witness: Tare, sir?

The Court: Yes.

The Witness: That is the weight of the package.

The Court: The way they are packaged?

The Witness: Yes, sir, of the container it is in.

The Court: I see.

A. (Continuing) I asked for the dimensions of the outer container, and I got very good response.

[fol. 1519] Q. Now, how did you go about selecting the manufacturers that you were going to visit?

A. Well, that was done largely through the commodity experts of the Tariff Commission, who are continuously in touch with the industry, both the importers and the manufacturers. The Tariff Commission has what is known as a commodity division, and specific commodities are assigned to specific men who spend their lives following them, and it was in conjunction with them that we selected the persons to whom we spoke.

Q. How did you go about getting the list of products from each of the persons whom you interviewed?

A. Well, if you go to the Heinz Company, for example, they manufacture a wide range of products, so we let them decide.

Q. Now, did you take notes?

A. Yes.

Q. What happened to those notes?

A. Oh, they have been destroyed years ago. The response was in writing, as I testified in my direct testimony; was sent into the Tariff Commission; was reviewed for anything obvious that wasn't right and then was sent on down to Richmond.

Q. Now, did you take notes of your interviews as they progressed?

[fol. 1520] A. Yes, I did.

Q. And the companies, in addition, sent a communication to the Tariff Commission?

A. That's right.

Q. And those communications are destroyed, also?

A. That's right.

Q. And who examined these responses?

A. Robert C. King, Chief of the Division, Walter Jones and myself.

Q. And after you made this examination you sent the raw data down to——

A. Richmond.

Q. —Richmond, Virginia?

A. That's right.

Q. And you say it was processed there?

A. Yes, sir.

Q. By employees of the WPA?

A. That's right.

Q. Can you give us their names?

A. No, I can't.

Q. Do you know how many?

A. No.

[fol. 1521] Q. Do you know how they proceeded——

The Court: Have you got an approximation of how many people were engaged in the project?

The Witness: No, I do not know. The project was in charge of a woman by the name of Myrtle Robbins.

The Court: Who was she, one of the employees of the Commission?

The Witness: She was one—she was a Tariff Commission employee.

The Court: That is what I mean, an employee of the Commission?

The Witness: Yes, and she was in charge of this project.

The Court: What function did she perform for the Tariff Commission?

The Witness: She was in the statistical division when she was on duty in Washington.

By Mr. Handler:

Q. Do you have any knowledge of how this material was processed by the WPA?

A. No. I told her what I wanted and she did it.

Mr. Handler: May that be repeated, your Honor?

[fol. 1522] The Witness: I said no, I can't tell you how it was done, because I told Mrs. Robbins what I wanted and she supervised it.

Q. Were you the only one who conducted the interviews?

A. Largely, yes.

Q. When you say "largely," was anyone else engaged in the interviewing process?

A. Well, let's put it this way: if people came into the office, somebody else did it, but I did all the travelling.

Q. What is the name of the person in the office who did the interviewing?

A. He is retired now. The name would be Robert C. King.

The Court: He was head of that division?

The Witness: That's right.

Q. And who prepared the questions that were to be submitted to the persons interviewed?

A. There were no questionnaires sent out. We merely went out and asked people how they packaged their products and to give us the detail of it.

Q. Now, did you personally verify the tabulations that were made?

[fol. 1523] A. No.

Q. You didn't compare the raw material against the text of Exhibit 365 for identification?

A. Not personally, no, sir.

Q. What is that?

A. Not personally.

Q. And therefore, you cannot personally vouch for its accuracy?

A. I know it was verified, but I didn't do it.

Q. You personally didn't verify it?

A. I personally did not verify it.

The Court: Who did verify it?

The Witness: That was done down in Richmond.

Q. By whom?

A. Under Mrs. Robbins' guidance.

Q. Did she do it herself?

A. I would assume that she did not do it herself.

Q. You don't know then who verified the tabulations?

A. In a tabulation of that size, no one person can do it.

Q. Many people?

A. Many people, yes.

Q. And can you give us their names?

[fol. 1524] A. No, I can't give you their names because I never even saw them.

Q. Now, in your direct testimony you referred to packaging characteristics of various products; what did you mean by those words?

A. I mean that certain products are packaged so much to a pack; the package weighs so much; the tare weight is so much; the gross weight is so much and the net weight is so much. You see, let me digress a little bit here. The reason that this job was done was because back in the old days the Tariff Act was administered much differently than it is now. Now it is done by negotiations under trade groups. But back in the old days, as I said initially, the point of principal competition was calculated and the difference between imports and domestic production at that point determined the rate of duty.

When I first went with Tariff, there was no means of

converting weight space relationship of imports as reported by the Census Bureau, because they spoke principally in terms of units—so many cases of this, so many hundred of that—so we had to come up with something to convert these units into weight space in order to arrive at official freight [fol. 1525] rates. So that was the purpose of commodity packaging.

Q. And that was your main interest in this study, wasn't it?

A. That's right.

Q. How did you go about selecting the packaging materials that you were going to study?

A. I didn't select anything.

Q. Can you tell his Honor that this compilation would list all of the packaging materials in which the many thousands of items moved in 1937?

A. No, I won't make that statement.

Q. You don't know, as a matter of fact, whether the compilation of packaging materials was exhaustive or not?

A. No, it was not. It doesn't purport to be.

Q. In other words—

The Court: As a matter of fact, your introduction to the thing says it isn't exhaustive; isn't that right?

The Witness: That's right; never intended to be that.

Q. Do I correctly understand that the main focus of your inquiry was to ascertain the varying weights of the packaging [fol. 1526] materials in which these commodities moved?

A. No, no. We were interested in arriving at a conversion factor. Well, for example, official freight rates largely move on terms of weight or measurement, whichever is the most beneficial to the ship. Land rates largely are on a weight basis. So in order to arrive at a cost of ocean transportation, we had to have this weight space relationship, which we have here.

Q. But that was a primary purpose of your study?

A. That is why it was done.

Q. You didn't go out to find out in what packaging materials these various products—

A. No.

Q. —moved—

A. No, we needed—

Q. —in order to determine how these products were being packaged?

A. We needed an internal tool, and when we got finished we decided it was worth releasing, so we published it. —

Q. Now, did you make any quantitative study of the number of products moving in one packaging material as contrasted with the same product moving in another packaging [fol. 1527] material?

A. No, sir; we were not interested in packaging material. We were interested in a conversion factor, and we went, as I said in my direct testimony, we went to principal producers in the United States and principal importers, and asked them not what are you packaging, but how do you package what you market?

Mr. Handler: Your Honor, we object to the proffer. It violates the rules appertaining to surveys in virtually as many aspects as there are rules. We don't have the original [fol. 1528] questions; we don't have the names of the persons interviewed; we don't have the names of the people who carried on the survey; we don't have the raw material; we don't have the supervisors. There is no way to determine the accuracy of the tabulation, and it is perfectly clear that the object of the study was for a purpose totally unrelated to that for which the document is being tendered in evidence. And the inference that the Government is trying to have your Honor draw, that there have been changes in packaging media, couldn't possibly be drawn from this document in light of the way in which it was compiled. From all your Honor knows and from all we know, when they list a packaging medium, there may have been a dozen that they didn't list. And the change, if there has been a change, may have occurred in 1938, a year after this study was made, not in 1955, '56 or 1960.

For these reasons, your Honor, we object to the document.

Mr. Greenberg: Your Honor, I would like to bring to your attention a letter from Mr. Donn N. Bent, Secretary of the United States Tariff Commission.

The Court: Now wait a minute.

[fol. 1529] Mr. Greenberg: Pardon?

The Court: Is this letter in evidence?

Mr. Greenberg: It is not in evidence. I wanted to approach the Bench with opposing counsel, have them read the letter and ask them if they will stipulate that—

The Court: Has Mr. Handler seen the letter?

Mr. Greenberg: Yes, he has, your Honor.

—and ask them if they will stipulate to avoiding the appearance of Mr. Bent, who is Secretary of the United States Tariff Commission.

The Court: Let me see the letter.

(After reading) You don't want Mr. Bent, do you?

Mr. Handler: Your Honor, the only thing I want is to have the document excluded.

The Court: I understand that.

Now, this merely confirms what this witness said, that none of the underlying data is available.

Mr. Handler: Which is completely beside the case. The destruction of documents might be of relevance with respect to the admissibility of secondary evidence, but the destruction of the underlying data of a survey makes the survey inadmissible, because it interferes with possible verification [fol. 1530] of the reliability of the investigation.

The Court: I want to tell you, Mr. Handler, it seems to me that this is not a survey in either a quantitative or qualitative sense. Since it is not a survey either in a qualitative or quantitative sense, I am going to admit it and take into account all that has been said here in evaluating any weight that might be given to it.

Mr. Handler: Your Honor, then I shall continue with the cross-examination of the witness.

The Court: All right.

Now apropos of that, what about the letter from Mr. Bent? Do you want that put in evidence?

Mr. Handler: I don't care, your Honor. The witness has stated that the data has been destroyed.

The Court: I don't think it adds anything to what the witness said.

Mr. Handler: Not in the slightest.

The Court: And he has testified that the basic data is all destroyed, so that I don't think this adds anything in particular.

The Witness: May I say, your Honor, that it is the policy of the Federal Government to destroy old data.

[fol. 1531] The Court: Eventually.

The Witness: Yes.

The Court: We understand that, and on the whole, I don't think we would quarrel with the policy.

I will withhold the actual admission of the document until Mr. Handler has completed his cross-examination, in case something else should develop.

Mr. Handler: Now, your Honor, I am going to ask your tolerance in my doing something that may not be strictly in accordance with the rules, but you will bear in mind that I have been given a document which I presently haven't had a chance to study, and since I have been unable to get from Mr. Greenberg the products that he is interested in, I want to be sure that my reading is accurate. So may I have your indulgence for a minute or two?

The Court: Yes.

Mr. Greenberg: I just want to remind Mr. Handler that we are concerning ourselves with the products in cans or glass containers or both.

Mr. Handler: That is precisely the point.

Mr. Greenberg: Okay.

[fol. 1532] By Mr. Handler:

Q. Since you are familiar with this document, will you look at page 3, which is the first page on chemicals, oils and paints, and tell us whether there is any product listed there which is packaged in glass or a tin container?

A. I don't see it offhand, no, sir.

Q. Now I turn to page 4 and ask you the same question?

Mr. Greenberg: Your Honor, I am going to object.

The Court: Your objection is overruled.

Mr. Greenberg: On the ground of the best evidence rule.

The Court: Your objection is overruled. I am going to allow very wide latitude in the cross-examination of this document, with all the basic data lacking, and containing masses of material which appear to me has no relation to this case at all.

Mr. Greenberg: Very well, your Honor.

A. There are several things that are in cans there.

Q. Are you sure about the first page? were you looking at the right column?

[fol. 1533] A. I am sorry. There is here on bottles, can, one gallon, cans, one gallon each.

Q. Let's take the first item, bottles, and you probably can pronounce these chemical terms better than I.

A. Acetic anhydride.

Q. And you have that in a bottle for what size?

A. No, it was in wooden boxes and two aluminum cans within it.

Q. No, you are not looking at the same place that I am.

A. I am sorry. My eyes are not too good.

Q. The first place where you see bottles?

A. Yes. All right. Here is bottles. That is acetic anhydride. It is in a wooden box with four bottles in it.

Q. And the size of those bottles?

A. It doesn't say here.

Q. Now, do you know—

A. They can't be too large, because the whole package is only 1.2 cubic feet.

Q. Now, have you any idea what other packaging materials, if any, this product was packaged in, in 1937?

[fol. 1534] A. As I told you, sir, we did not approach this thing from a packaging standpoint.

Q. The answer is that you do not know?

A. No.

Q. And do you know whether any change in the packaging of this product has occurred since 1937 down to date?

A. No, I haven't been associated with this problem since 1945.

Q. Was there any change in the packaging from 1937 to 1945?

A. That I can't say. This was a one-time job that was only done once by anyone.

Q. And do you know in what materials this item is being packaged in today?

A. No.

Q. If I were to go down page by page, under chemicals, oils and paints, and ask you the same questions, you would give me the same answer?

A. Generally.

Q. Yes. And if I were to do the same with respect to the

material that appears under the heading "Agricultural and Fishery Commodities, Manufacturers Thereof, and Beverages," and go through it page by page—

A. I made no attempt to keep up. My present job is with [fol. 1535] Ocean Shipping, and we deal in tons, not packages.

Q. And you would not know even as of 1937 whether the packaging materials listed here were correct or incorrect?

A. I only have—

The Court: I don't understand that question. What do you mean by "correct or incorrect"?

Mr. Handler: I will withdraw the question and rephrase it.

Q. You wouldn't know whether in point of fact the materials moved in the packaging materials that are listed in this tabulation, as of 1937?

A. Not by inspection, no, sir.

Mr. Greenberg: Your Honor, may I *respect* Mr. Handler to step back just a few feet so that the witness may collect his thoughts?

The Court: No. Mr. Handler is trying to work with a document he only had over the weekend. He has only one copy of it.

Mr. Greenberg: I would like to make a statement for the record: the attorney for the Willkie firm who was down in our office a few months back, and we identified that document for him and told him that the Tariff Commission had [fol. 153C] copies of it.

The Court: But, Mr. Greenberg, you did not expect, because you identified a document, which you did not mark for identification, that the Willkie firm or Mr. Handler or anybody else was going into that document.

Mr. Greenberg: Maybe so, your Honor. I merely wanted to note for the record that they had been informed that this document existed a few months back.

The Court: There was a procedure, Mr. Greenberg, whereby the Government was marking for identification all the documents that it expected to offer. I am going to allow Mr. Handler to do pretty nearly anything he wants to do with the document.

Mr. Handler: Could I have the last question and answer before Mr. Greenberg's objection?

(Question and answer read.)

[fol. 1537] Q. Of course, you don't know what has happened with respect to packaging materials that have been used for the thousands of items under "Agricultural and Fishery Commodities" since 1937?

A. As I say, I haven't followed packaging since 1945.

Q. What is the extent of your knowledge from 1937 to 1945?

A. Well, I followed it pretty thoroughly.

Q. And you studied the changes in that period?

A. Yes. I attended all the conventions and I spent a lot of time in the field, but since 1945 I have not followed it at all.

The Court: Mr. Harmon, at that time, in 1937, when this survey was conducted, what was your general background and what were your qualifications with respect to your position?

The Witness: Well, I started all this back in 1932, when I worked with Joseph P. Eastman, Coordinator of Transportation.

The Court: In what capacity did you work for him?

The Witness: I was a supervisor in the analysis of cost of operations.

[fol. 1538] The Court: Are you an accountant?

The Witness: I was, years ago.

The Court: Are you a CPA?

The Witness: No.

The Court: How long had you done accounting work up to 1937?

The Witness: Well, I started back in 1926.

The Court: Was that with the Government?

The Witness: No, a private concern.

The Court: And when did you first start with the Government?

The Witness: I started with the Government in 1932. I took a job with Mr. Eastman in analyzing rail costs. I worked with him until 1937 when I went to the Tariff Commission. I left the Tariff Commission in 1945 and then I took my present job.

By Mr. Handler:

Q. Do I understand that your answers to questions concerning Agricultural and Fishery Commodities would be the same as your answers with respect to Chemicals, Oils and Paints?

A. I am fairly familiar with the method of packaging for ocean shipping but not in small containers.

Q. And therefore your answer about your lack of knowledge [fol. 1539] edge would be the same?

A. I told you, sir, from 1945 I haven't followed it.

Mr. Handler: Your Honor, in order not to waste the time of the Court, I have concluded my cross-examination now. We will study this document with care, and if we find it necessary to recall Mr. Harmon—

The Court: All right, Mr. Harmon will be subject to recall in case it becomes necessary, although I do not anticipate that that eventuality will occur.

Mr. Handler: Neither do I, your Honor.

The Witness: I would like to avoid it, if you don't mind.

The Court: We will avoid if we can.

The document will be admitted, as I say, but, of course, in considering what weight is to be given to it, everything brought out today will be taken into consideration.

(Government's Exhibit 365 for identification received in evidence.)

Mr. Greenberg: The Government's next witness, your Honor, is Mr. Williams.

[fol. 1540] EARLE T. WILLIAMS, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Mr. Greenberg: Your Honor, the Government will attempt to lay a foundation for document G-773 through this witness.

The Court: What is the purpose of document G-773?

Mr. Greenberg: Your Honor, this is a document which was obtained from the files of Hazel-Atlas Glass Company in 1954 or 1955 pursuant to a Federal Bureau of Investiga-

tion search for documents which would indicate price leadership.

The Court: I am asking you what the purpose of the document is.

Mr. Greenberg: I wanted to preface my remarks, your Honor, because it is not a document out of the files or produced pursuant to our motion to produce, and hence is not covered by a stipulation.

This document, your Honor, purports to show the competition between can and glass containers as noted by Hazel-Atlas employees.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

[fol. 1541] A. Boston, Massachusetts.

Q. What is your present position?

A. District sales manager.

Q. For whom?

A. Continental Can Company.

Q. Pardon?

A. Continental Can Company.

Q. Is that the glass division?

A. That is right.

Q. How long have you held that position?

A. As district sales manager since 1937.

Q. And you were with the Hazel-Atlas Glass Company in 1953, is that correct?

A. Yes, sir.

Q. I show you Government's Exhibit 773 for identification and ask you if you recognize it?

A. Yes, I do.

Q. And would you tell us what it is?

A. It is a letter reporting to our company a conversation held in Portland, Maine, regarding—

Mr. Hughes: Will you keep your voice up.

Q. Just speak a little higher.

A. It is a letter to the company reporting a conversation held in Portland, Maine.

[fol. 1542] Q. A conversation with whom, sir?

A. A buyer for a packager in Portland.

Q. What is the name of the packer?

A. Burnham & Morrill.

Q. Did you engage in this conversation with this representative?

A. Yes.

Q. Did you report the facts of that conversation in this fashion?

A. I did.

Q. And what happened with the document after it was executed or written?

A. Nothing further happened.

Q. Didn't you then go—

A. It was sent to the company.

Q. It was sent to Mr. Neuhart?

A. Yes.

The Court: Who was Mr. Neuhart?

Q. Who was Mr. Neuhart at that time?

A. I believe he was vice-president.

Mr. Greenberg: The Government offers 773.

Mr. Hughes: I object to it as incompetent, irrelevant and immaterial. It is the rankest sort of hearsay, and there is no possible probative value to the document.

[fol. 1543] Here is a letter which reports a hearsay conversation with a man somewhere in Maine, your Honor, and I just don't see that it has any possible probative value.

The Court: Do you want to examine him?

Mr. Hughes: Yes, I will examine him.

The Court: Go ahead.

Cross-examination:

By Mr. Hughes:

Q. Now, Mr. Williams, at the time you wrote this letter you were employed by the Hazel-Atlas Company, is that correct?

A. Yes, sir.

Q. In what capacity?

A. New England sales representative.

Q. And during the course of your duties you ran into a Mr. Thayer, is that correct?

A. Yes, sir.

Q. Of Burnham & Morrill?

A. Yes, sir.

The Court: Mr. Greenberg, see that the witness has before him a copy of this letter.

Mr. Greenberg: Yes, your Honor.

(Document handed to the witness.)

[fol. 1544] By Mr. Hughes:

Q. And who was Mr. Thayer?

A. Purchasing agent of Burnham & Morrill.

Q. Who are Burnham & Morrill?

A. Packers of vegetable products.

Q. And this letter then reports a conversation which you had with Mr. Thayer, is that correct?

A. That is correct.

Q. And in that conversation Mr. Thayer purported to tell you something that someone from Anchor Hocking had told him, is that right?

A. Yes, sir.

Q. And you do not know and cannot tell his Honor whether what purportedly was stated by the Anchor Hocking man was in fact stated by the Anchor Hocking man, can you?

A. I do not know.

Q. And you have never checked with anybody in Anchor Hocking to verify the correctness of the report to you by Mr. Thayer of Burnham & Morrill, of this conversation which he reports he had with the man from Anchor Hocking, is that right?

A. The statement was never checked with anybody.

Q. And you don't know whether in fact Burnham & Morrill gave any advice of any kind to Anchor Hocking and [fol. 1545] Armstrong with respect to price increases, is that correct?

A. I do not.

Q. And you cannot say whether as a result of any conversations between Mr. Thayer and anybody in Anchor

Hocking or otherwise that Anchor Hocking changed its prices, is that correct?

A. I do not know.

The Court: I take it the conversation was in the course of your efforts to sell glass jars to Burnham & Morrill, is that right?

The Witness: That is right.

The Court: That was part of your sales activities?

The Witness: That is right.

The Court: And this is what they told you?

The Witness: That is right.

Q. And beyond that you have no way of verifying in any way, shape or form whether the conversations ever took place or whether they were accurately reported, is that correct?

A. That is right.

Q. Now, how did Burnham & Morrill pack their products at that time?

[fol. 1546] A. They packed them in glass and metal containers.

Q. And has there been any change of any kind in the way they pack their products?

A. Not that I am aware of.

Q. What products did they pack in glass?

A. Beans and corn, relish.

Q. What products do they pack in cans?

A. They pack beans in cans.

The Court: Is that baked beans?

The Witness: Baked beans and they also packed other vegetables like corn.

Q. In what type of container did they pack its vegetables?

A. In cans.

Q. And was that true back in 1953, so far as you know?

A. Yes.

Q. And it is true today?

A. Yes.

Q. Now in the last paragraph on page 1 of this letter there is the statement:

"This will probably not affect us until that time, but we are splitting this business with Owens-Illinois, and

[fol. 4547] somewhere along the line, an adjustment in prices will undoubtedly have to be made."

Do you recall that quotation from the letter?

A. Yes, sir.

Q. Were you there referring to an adjustment in the price of glass?

A. Oh, no.

Q. You were not in any respect referring there to cans?

A. No, sir.

Q. Was there in fact an adjustment in price made?

A. No, sir.

Q. So that the sum total of this letter was that Burnham & Morrill were trying to give you a hard time with reference to your then current prices, is that correct?

A. That is correct.

Q. And you held your ground and the price remained the same, is that right?

A. That's right.

Mr. Hughes: Your Honor, in the light of the cross-examination, I move to strike the exhibit. It seems to me—

The Court: I have not admitted it yet.

[fol. 1548] Mr. Hughes: Oh, I beg your pardon. I press the objection.

Mr. Greenberg: Your Honor, we have no further questions and the Government offers Government's Exhibit 773.

The Court: Well, let me ask you this, Mr. Greenberg:

You certainly do not offer them as any evidence of what either Anchor Hocking or Armstrong Glass said to Thayer of Burnham & Morrill, do you?

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: Is it correct that you are or are not offering it for that?

Mr. Greenberg: It is correct your Honor, that we admit that this party was reporting a conversation of Thayer which he allegedly had with representatives of Anchor Hocking at which the witness was not present.

The Court: Well, to me this is no evidence of anything, except what Thayer told the witness.

Mr. Greenberg: Very good.

The Court: It isn't the slightest indication to me that Anchor Hocking ever discussed the price question with the witness Thayer, and I am not taking it for that purpose.
[fol. 1549] Mr. Greenberg: Very well.

The Court: There is no evidence in the record that that ever occurred. I will take it for the limited purpose of reporting a conversation that this witness had in the course of his selling with Thayer of Burnham & Morrill, and for that limited purpose only, which conversation was reported to the sales manager of the company.

(Government's Exhibit 773 for identification received in evidence.)

The Court: You may step down, Mr. Witness. Thank you.
(Witness excused.)

Mr. Greenberg: Your Honor, may I make one comment at this juncture?

Of course, the letter in its terms in other paragraphs indicates something else as well, and I assume——

The Court: Well, it indicates what Williams said to his superior in the way of comment. If that is of any value to you, it is in there.

Mr. Greenberg: I think it also indicates, your Honor, that Burnham & Morrill was using the can-glass relationship as a wedge.

[fol. 1550] Mr. Hughes: Your Honor——

The Court: That is a conclusion that you draw from the letter. You can argue until the cows come home about that if you want to, but that is not an evidentiary question at all.

Mr. Greenberg: The Government's next witness is Mr. Menair.——

The Court: How long is Mr. Menair going to be?

Mr. Greenberg: He will be very short as far as direct examination is concerned.

Mr. Hughes: There may be some cross, your Honor.

The Court: If Mr. Menair is likely to take any time, I think we will take him directly after lunch.

Have you gentlemen had enough time for lunch?

Mr. Hughes: Yes, sir, we have.

Mr. Greenberg: Yes, sir.

The Court: We will start here at two o'clock.

(Recess to 2:00 p.m.)

[fol. 1551]

AFTERNOON SESSION

The Court: Good afternoon, gentlemen.

All right, sir, let's have the next witness.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Menair.

Will Mr. Menair take the stand?

Your Honor, I will make reference to G-775 during this examination.

The Court: All right.

FRANK C. MENAIR, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. In Jenkinstown, Pennsylvania.

Q. What is your present position?

A. Sales representative for Continental Can, the Hazel-Atlas Division, Philadelphia.

Q. How long have you held your position?

A. 34 years.

Q. And you were with the Hazel-Atlas Glass Company in 1954; correct, sir?

A. I was.

Q. What was your position then?

[fol. 1552] A. Same as I am now, sales representative.

Q. I show you Government's Exhibit 775, which has been marked for identification, and ask you if you recognize it?

A. Yes, I do.

Q. Would you tell us what it is, sir?

A. It is a letter written to our vice-president and general sales manager at the time, Mr. John S. Algeo. Do you want the subject of the matter?

The Court: Well, no—well, all right, tell us generally what it is.

The Witness: It is a report on economic and competitive conditions as they existed at that time.

Q. And, sir, will you tell us whether the facts contained in that document were personally observed by you?

A. Yes, they were.

Mr. Hughes: Wait a minute. I object.

Mr. Greenberg: You may cross.

The Court: I will sustain the objection. Strike the answer out.

Q. Sir, will you tell us how you learned of the facts contained in that document?

A. By visits to the people involved.

[fol. 1553] Mr. Greenberg: You may conduct your voir dire.

I offer Government's Exhibit 775 into evidence.

Mr. Hughes: Your Honor, without any voir dire I object to the document because it is apparent on its face that it is pure hearsay, and it would seem to me that voir dire would be unnecessary to indicate that it was inadmissible and lacking in any probative value. The witness is here—

The Court: Mr. Hughes, this is a report by a sales representative to the head of the sales force of Hazel-Atlas, making certain statements to him as to his observations. It seems to me to be perfectly admissible in evidence at this stage in the absence of some voir dire.

Mr. Hughes: Well, your Honor—

The Court: He is reporting as to his own observations in the course of his work, and there doesn't seem to me to be any question of its admissibility. What it is intended to prove is another matter.

Mr. Hughes: Well, the witness is here, and it seems to me that rather than just having him identify a piece of paper the witness can testify to whatever facts he knows. This is [fol. 1554] just, it seems to me, a short-cutting of the witness's testimony.

The Court: This is something from the files of the company, addressed to Mr. Algeo. It presumably came to Mr.

Algeo's attention. I will permit you to cross-examine on the voir dire.

Mr. Hughes: Your Honor, it is a kind of a fine line to draw sometimes between the voir dire and what is strictly cross-examination.

The Court: I understand, Mr. Hughes.

Mr. Hughes: Yes, sir.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Menair, do you have a copy of that exhibit in front of you?

A. Yes, sir.

Q. Will you look at the third paragraph, which is your reference to the Fountain Topping account; do you see that reference?

A. Yes.

Q. And you were there referring to a man who packed supplies for these soda fountains and places like that; is that right?

A. That is correct.

Q. And in that paragraph were you dealing with institutional sizes?

A. Yes.

Q. Now, it says, "This manufacturer packs marshmallow, chocolate syrup, walnuts in syrup, cherries and pineapple"; you see that, don't you?

A. Yes.

Q. What kind of a container was he using for packing marshmallows and chocolate syrup?

A. He was using a No. 10 tin at that time and had been for some time.

Q. And what kind of a container was he using for walnuts in syrup and cherries and pineapple?

A. Half-gallon glass jar.

Q. Now, the price you were referring to went into effect, did it not?

A. That is correct.

Q. And it stayed in effect, did it not?

A. That is correct.

Q. And this packer stayed in tin for marshmallows and syrup and he stayed in glass for walnuts in syrup, cherries and pineapple; is that right?

A. He stayed in the respective packages for those products, yes.

Q. There was no change or switch of any kind?
[fol. 1556] A. That is correct.

Q. Now, in the next paragraph you refer to a pickle packer; do you see that?

A. Yes.

Q. And is the burden of what you were reporting there that this pickle packer was threatening to go to another glass supplier?

A. Yes, that is correct.

Q. There wasn't any talk about switching to the tin container, was there?

A. No.

Q. Now, the next paragraph deals with a concern which packs seafood in private molds; do you see that?

A. Yes.

Q. And there is a reference there to some sort of a substitute material for the product; do you see that?

A. Yes.

Q. And what was the substitute material that he was talking about?

A. Well, there were two thoughts, one, that it might be switched into a paper container, and the second was a styrene plastic container.
[fol. 1557]

Q. Now, what was this seafood product that was referred to?

A. It was a shrimp in a cocktail sauce which was sold under refrigeration in a glass jar.

Q. Would you call that a specialty item?

A. Yes.

Q. And was it an item that had a limited shelf life?

A. Yes, a shelf life of about two weeks.

Q. And did this customer continue to package shrimp cocktail in your glass containers?

A. Yes, he did continue to stay in glass.

Q. And did he stay with you?

A. Well, he stayed with us for a while, but then he

switched to a competitor who offered a lower price, and about 18 months ago the business came back to us.

Q. And when you say he switched to a competitor, you are referring to another supplier of glass containers?

A. That is correct.

[fol. 1558] Q. So far as you know, Mr. Menair, were there any switches to other types of packing materials as a result of this price increase that you testified about?

A. I don't recall any, Mr. Hughes.

Q. Do you remember in response to Mr. Greenberg's question you said it was a report of the comparative situation? Do you recall using those words in response to Mr. Greenberg's question?

A. I didn't get that question.

Q. I say, do you remember that in response to Mr. Greenberg's question you described the letter as a report of the competitive situation?

A. That's right.

Q. Were you referring to the competitive situation among glass container manufacturers?

A. Primarily, yes.

Mr. Hughes: I have no further questions.

The Court: All right, Mr. Greenberg.

Mr. Greenberg: Your Honor, the Government has no further questions.

The Court: All right.

I take it your renew your objection, Mr. Hughes, on the basis of your examination of the voir dire?

Mr. Hughes: I do, your Honor, yes, sir.

[fol. 1559] The Court: The same ruling to this as with respect to previous documents. It will be admitted and considered against the background of the testimony with relation to it.

Mr. Hughes: I wonder if we might have, as in the other instances, the purpose of the offer.

The Court: Yes, I think so.

Mr. Greenberg: I would like to have the document before me, your Honor.

The Court: Yes.

Mr. Greenberg: Your Honor, once again, the Government urges upon the Court, very respectfully, that this document

shows the wedge mechanism that results from can and glass competition. That is the purpose that we put this in for.

Mr. Hughes: No further questions.

(Government's Exhibit 775 for identification received in evidence.)

The Court: All right, you may step down. Thank you.

(Witness excused.)

The Court: Next witness.

Mr. McManus: Mr. Lobred, please.

[fol. 1560] LEONARD K. LOBRED, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: Mr. McManus, before you proceed, we are now going to go to Exhibit 133?

Mr. McManus: Yes, sir.

The Court: Has there been any previous testimony given with respect to this exhibit?

Mr. McManus: No, sir.

The Court: I think if you would be good enough at the outset to tell me whether there has been any previous background or testimony, because I cannot always identify these things by number, and this is the first time we have heard about this, is that correct?

Mr. McManus: Yes, sir, that is right.

The Court: Very good.

Direct examination.

By Mr. McManus:

Q. Mr. Lobred, by whom are you employed?

The Court: Let me ask this:

First of all, what is the purpose of this exhibit?

Mr. McManus: Yes, your Honor. This exhibit, your Honor, we believe, first explains the purpose of the canning industry, the size of the industry, and gives information on

[fol. 1561] the methods in which foods are canned. It also shows that glass containers and metal cans are the two types of containers that this association considers to be a part of the canning industry and describes the methods that cans and glass both are used in packaging products.

The Court: Mr. Hughes, I take it that you respectfully object to this document, do you?

Mr. Hughes: Yes, we do.

The Court: All right, go ahead.

By Mr. McManus:

Q. By whom are you employed, Mr. Lobred?

A. National Cannery Association.

Q. Where are your headquarters?

A. In Washington, D.C.

Q. And, for the record, could you tell us who are members of the National Cannery Association?

A. Cannery of food for human consumption.

Q. And do you know approximately how many members there are?

A. Approximately 700.

Q. How many did you say?

A. Approximately 700.

Q. What is your position with the Association?

[fol. 1562] A. I am editor of the Weekly Membership News Letter.

Q. Are you engaged in any other publications?

A. Yes.

Q. Of the Association?

A. Yes.

Q. Are there many?

A. Well, there are a few regularly issued publications, and some from time to time.

Q. And is one of those documents The Canning Industry?

A. Yes.

Q. 1957?

A. Yes.

Q. Is that an annual publication?

A. No.

Q. How often is that published?

A. It was first issued in its present form in 1952. The second edition was issued in 1954, and the third, I believe, 1957.

Q. Was that the last one?

A. There has been a fourth edition in 1959.

Q. Directing your attention to Government's Exhibit 133 for identification, could you tell me the purpose of that [fol. 1563] document?

A. It is a general information booklet to give what we consider in factual terms general information about the canning industry so as to reflect correctly on the industry and its products.

Q. And are you familiar with the distribution of that document?

A. I don't know where every copy went, but generally.

Q. How is it distributed normally?

A. The initial distribution is one to each member, and it is used to respond to requests for information from the public.

Q. I show you Government's Exhibit 133 for identification. Do you recognize that document?

A. Yes.

Q. Is that your 1957 edition of The Canning Industry?

A. Yes.

Q. Was this prepared under your direction?

A. Yes.

Mr. McManus: Your Honor, the Government offers Government's Exhibit 133.

[fol. 1564] The Court: All right, Mr. Hughes, Mr. Kuhn.

Cross-examination.

By Mr. Kuhn:

Q. Mr. Lobred, was there an earlier edition of this publication entitled The Canning Industry prior to 1952?

A. Yes.

Q. How far back did that go?

A. The last printing that I know of was dated 1939.

Q. Did it come out before that?

A. I believe that it did some time in the early 30's.

Q. Were you involved in that?

A. No.

Q. You did not come to National Canners Association until when?

A. 1947.

Q. Were you involved in getting out the edition that came out in 1952?

A. Yes.

Q. Did you rely primarily for the information contained in the 1952 edition on the material in the 1939 edition?

[fol. 1565] A. Yes.

Q. You might tell us, if you know, who prepared the 1939 edition?

A. I believe it was prepared by a man named J. Fitzgerald.

Q. Is he still with the Association?

A. He retired and he is deceased. He was then a director of information.

Q. Do you know anything about the nature of the preparation of the 1939 edition?

A. No.

Q. Now, G-133, I take it, is a later edition of the 1952 edition, which was the first one you worked on?

A. Yes.

Q. And periodically, I take it, it has been updated in some respects to reach the 1957 edition, which is the one that the Government is offering?

A. Yes.

Q. Would it be true that the sources upon which you relied in preparing the 1952 and the 1957 edition are primarily classifiable as secondary sources?

A. Yes.

Q. Other than the 1939 edition, which one of the sources, does it rely on advertising brochures of various companies? [fol. 1566]

A. Yes, sir.

Q. Does it rely on such things as press releases of a company?

A. Yes, sir.

Q. Does it rely on publications of the American Glassware Association?

A. Yes, sir.

Q. Does it contain a certain amount of opinion of the editor?

A. We have sought to make it factual—

The Court: That was not the question. The question was, does it contain a certain amount of opinions of the editor?

The Witness: Yes.

Q. Did others work on this document than yourself, Mr. Lobred?

A. Yes, sir.

Q. About how many people?

A. About ten.

Q. About ten people in addition to yourself?

A. Yes.

Q. Did you actually write any of this document?

A. Not originally.

[fol. 1567] Mr. Kuhn: We object to the document, your Honor.

The Court: What do you say, Mr. McManus?

Mr. McManus: We still offer it, your Honor.

I would like to ask just a few more questions.

The Court: All right.

Redirect examination.

By Mr. McManus:

Q. In each year that you published these documents, in 1952 and 1957, did you attempt to bring the publication up to date?

A. Yes, sir.

Q. In other words, the 1957 edition is not the 1952 edition but it has been brought up to date to the best of your ability?

A. Yes.

Q. Now I would like to show you the document and in the back it says, "Canning industry references."

Do you recall that section?

A. Yes.

Q. Are these some of the publications upon which you relied to write the document?

A. Yes.

The Court: Where is that, Mr. McManus?

Mr. McManus: that is on page 39.

[fol. 1568] The Court: Mr. Lobred, will you give us your background?

The Witness: Well, I have a degree in journalism from the University of North Carolina, I went into the Navy, and in 1947 joined the staff of National Canners Association.

Q. And you have been with them ever since?

A. Yes.

Mr. Kuhn: Your Honor, if I may ask a few more questions.

The Court: Yes.

Recross-examination.

By Mr. Kuhn:

Q. Do you consider yourself an expert in food technology?

A. No, sir.

Q. How about canning machinery, do you consider yourself an expert on canning machinery?

A. No, sir.

Q. There is a chapter here on canning machinery?

A. Yes.

Q. Have you ever been in a canning plant?

A. Yes.

Q. How often?

A. Two canning plants.

[fol. 1569] Q. Was that on the same day?

A. On the same day.

Q. Do you consider yourself an expert on some of these other subject matters that are listed in the contents of the document at the beginning? How about, "Economic importance of the canning industry"?

A. No, sir.

Q. How about "Scientific research in the canning industry"?

A. No, sir.

Q. How about "High quality raw products for canning"?

A. No, sir.

By the Court:

Q. Let us start, for example, on page 9.

Where did that come from?

A. That was prepared by the Division of Statistics.

Q. Of what division?

A. Of the National Canners Association.

Q. How did they get their statistics to make that up, do you know?

A. The Association initiated a statistical program in the mid 30's, and this chart, I believe, would incorporate NCA statistics as well as any others that would be considered [fol. 1570] reliable.

Q. Is the same thing true of these annual charts on page 10, the production of various canned products on page 10?

A. Yes.

Q. Is the same thing true of the table on page 11 and the charts on page 12?

A. Yes.

The Court: Suppose you state the basis for your objection a little more fully, Mr. Kuhn.

Mr. Kuhn: Well, your Honor, it seems to me that Mr. Lobred as the editor of the information letter of the National Canners Association is not at all concerned in his day to day work with the technical subject matter which is the greater part of this document.

Additionally, it seems to me that the document was largely prepared by persons other than Mr. Lobred, going back over a period of many, many years, and that his primary task with respect to it has been that in the strictest sense of an editor, pulling things together and giving them to the printer.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, I am not saying that that is [fol. 1571] not so but that there are approximately ten people, as I understand it, on the staff who are responsible for the various statements in this document. I have the names here and, of course, we could subpoena all ten of those people so that they could be cross-examined.

We do not hold Mr. Lobred out to be an expert in the scientific aspects of canning foods.

The Court: If Mr. Lobred had written what is contained

in this document or if it was done by his staff under his direction, that is one thing, but here is a document which contains a variety of statistics and all kinds of statements of facts on which I take it the Government intends to rely.

Mr. McManus: Yes, sir.

The Court: Such as evidence of certain percentages and all the rest. I don't think any basis has been laid on which this document can presently be admitted in evidence in its entirety.

Mr. McManus: Your Honor, this is a document which, for many years, as it has been brought out here, has been conceded and relied upon by the largest associations in the country of canned foods.

[fol. 1572] The Court: The testimony is that this was a promotion job, primarily.

Mr. Kuhn: There was no suggestion it was relied upon, as far as I know.

The Court: And this publication's object is to sell in one way or another or promote the sale of package goods, canned goods.

Now, it would be one thing to take this as a publication put out by the canning industry to its members without taking it as proof of any of the facts stated in it. That is one thing. It might very well be that on such a basis the defendant would have little if any objection to it. But to take it on the basis of attempting to prove the basic facts here which may be of some significance, some considerable significance, in this litigation, I just don't see it.

I will sustain the objection to the document.

Mr. McManus: All right, your Honor; in that case we will attempt to call the specific people who did write and edit each one of these sections, who do happen to be specialists in their field.

The Court: Is there anything further you wish to ask Mr. Lobred?

[fol. 1573] Mr. McManus: No, sir, your Honor.

The Court: Thank you, Mr. Lobred. You may step down.

(Witness excused.)

Mr. McManus: Your Honor, we would like to now call Dr. Steier, of the National Canners Association.

The Court: Dr. Steier. All right, go ahead.

HOWARD L. STEIER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q: Dr. Steier, you are an employee of the National Canners Association; is that correct?

A. Yes, sir.

Q. And for how long have you been employed in that capacity? For how long have you been employed in that Association?

A. Since October of 1951.

Q. And in what capacity?

A. As director of the Division of Statistics.

Q. And were you formerly employed by some other group? Were you formerly employed?

A. By the University of Maryland.

Q. And in what capacity?

[fol. 1574] A. As professor and head of marketing in the College of Agriculture.

Q. And could you tell me what is your background? Were you graduated from Maryland?

A. Yes, sir. I took my graduate work at the University of Maryland. After graduating from the University of Maryland I worked two years for the Agricultural Field Station of the United States Department of Agriculture.

Q. And what were your duties in that capacity? What were you doing at that time?

A. At Beltsville?

Q. Yes, that's right.

A. I served as agent in charge of breeding investigations.

Q. And what was your doctorate at the University of Maryland? What did you get your doctorate in?

A. My doctorate?

Q. Yes.

A. Horticulture and plant physiology.

Q. And since October of 1951 you indicated that you have been head of the Division of Statistics for National Canners Association?

A. That is right.

[fol. 1575] Q. And do you have employees under you?

A. Yes.

Q. Approximately how many?

A. Six.

Q. And generally speaking, what are their duties?

A. They are statistical clerks who compile and compare the reports on statistics concerning the production and stocks and shipments of canned foods and other related types of industry statistics.

Q. And they have been doing that—and you have been doing this for the period 1951 to date?

A. Yes, sir.

Q. Now, Dr. Steier, I show you Government's Exhibit 133, marked for identification, and could you look through here and—first tell me if you recognize that document?

A. Yes, sir.

Q. Are you familiar with the statistical charts and tables in this document?

A. Yes, sir; I am.

Q. And who prepared those charts and tables?

A. The charts were prepared under my direction by a statistical draftsman, and the data and tables were assembled in our division.

Mr. Hughes: I am sorry. Your voice falls.

A. The data and tables are assembled and prepared in our division and the charts were prepared by a statistical draftsman.

Q. Now, for example, taking the first chart on page 8, are you familiar with that chart?

A. Yes, sir; I am.

Q. And on what did you—what was the basis of this chart?

A. These bars here represent the percentage of the total raw product production of each of these crops listed here that are canned, and the figures come from the records of the U.S. Department of Agriculture.

Q. Going now to page 9, are you familiar with that chart?

A. Yes, sir.

Q. And where was the basic data obtained for that chart?

A. In the early years it was obtained from the census of manufacturers for the canning and preserving industry.

and for the later years, from the National Cannery Association figures.

Q. And going to page 10, looking at annual packs of [fol. 1577] canned fruits and vegetables, 1870 to 1937, did your group prepare that?

A. Most of those figures are from the census of manufacturers.

Q. I see. Now going down to the section, production of various canned foods 1938 to '56, what was the basis for that?

A. Now this will vary. In these columns that you see here the figures in columns 1, 2 and 3, the canned fruits, juices and vegetables were prepared from the National Cannery Association figures, with the exception of part of the canned juices total, which are industry estimates. Now, the canned specialties are industry estimates. The canned milk figures in the next column are from the Department of Agriculture. The canned fish are assembled by the Department of Interior, Division of Fish and Wild Life Service. The canned meat figures are converted to standard cases from the U.S. Department of Agriculture data.

Q. Now going to page 11, apparent annual survey and per capita consumption of various canned foods, what was the basis of that?

A. These figures for the most part are directly from the U.S. Department of Agriculture.

[fol. 1578] Q. And going to—

The Court: Excuse me.

When you say, Mr. Witness, they are figures from the National Cannery Association, what does that mean?

The Witness: That means that—and I was referring there to the figures on the bottom table on page 10—that the figures showing production of canned vegetables and canned juices and canned fruits were those that were assembled by our statistical division from reports that we received from canners.

The Court: All right, go ahead.

Q. Now going to the chart on page 12, Dr. Steier, would you tell us the basis of the first chart, canned fruits?

A. Well, this again is per capita consumption. You will notice that the title under the chart is essentially the same

as the table on the preceding page, on which these charts are based. It is U.S. Department of Agriculture figures on per capita consumption on canned fruits.

Q. If I asked you the same question for canned vegetables, canned juices and other canned foods, would your [fol. 1579] answer be the same?

A. Yes, sir.

Q. All right. Now going to what might be called the fly-leaf, if we could, your Honor, that would probably be the third page, we have certain statistical data here on the production of the canning industry, and then the canning industry comprises so many canneries; would you have furnished that type of information?

A. Yes, sir; part of it.

Q. Which have you furnished?

A. The production figures, you will see that those are identical if you compare the figures in the economic importance chapter, the one we were just referring to. These figures were taken from there, and also the figures down here, under "Value of Raw Products Paid Producers Annually For the Raw Product."

Q. And where was the basic data for that obtained?

A. The total production figures are the combination of the National Canners Association and these other agencies I mentioned. The figures on dollar value paid farmers is partially from the Department of Agriculture, and the Division of Wildlife Service on the value of the fish products and others.

Q. The part under "Workers" there, would you furnish those figures, also?

A. Yes. That would have come from the Bureau of Labor Statistics data.

Q. In fact, any of the statistical data that in this publication, would that have been furnished by you or your statistical unit?

Mr. Hughes: Will you speak a little louder, please?

(Question read.)

A. I am not sure that there are not statistical data in some of the other sections or chapters here. The only ones

that we did supply would be those contained in the "economic importance" chapter, and the ones in front here.

Mr. McManus: I see, thank you, Dr. Steier.

By the Court:

Q. Now, it is the fact, Dr. Steier, that in the so-called "economic importance" chapter, any statements, figures, were supplied by your division?

A. Yes, sir; that is correct.

Q. And were those figures checked by your division?
[fol. 1581] A. Yes, sir; insofar as you can check secondary sources, those that come from the Department of Agriculture, Fish and Wildlife.

Q. Yes.

A. Those that we assembled ourselves, of course, were checked and edited in our own division for completeness and reasonableness by our own clerks.

Q. And when you say "checked," what did you check them against?

A. Well, we assembled not only figures on production, which are included here—

Q. You assembled those from your members by reports from your members?

A. Yes, sir. But not only do we get production figures, that is, quantity produced or canned, we also get from them quantities that they have in their warehouses, stocks, and their monthly shipments on minor or major products. Now, if the figures that they give us for production, which is what we are concerned with here, are not correct, we are likely before the end of the year to find that stocks and shipments are not in line, and we try to match them up, get corrected figures. Sometimes this happens. The completeness of the figures are checked on the basis of the total number of [fol. 1582] canners that we know are packing that individual product, and we get reports not only from members, but from non-members of the Association, all who canned products.

Q. When you say you get reports from non-members of the Association, I notice there was a statement in here somewhere that there were some 2700 canners throughout the United States; where do you get that figure from?

A. That figure is based upon an account of the number that are listed in the Cannery directory, that the Association compiles and did compile annually up to 1957.

Q. How did the Association compile the data in that directory?

A. They submitted their questionnaire to the—here again, it wasn't part of the Statistics Division. I am only able to give you what I know of the Division's procedure here. The questionnaire was sent to all known canners and food packers. They completed it and returned it to the Association, and the Association just used it as a basis for the directory.

Q. Is that canners directory, can you tell me, used throughout the industry as a standard work of reference?

[fol. 1583] A. Yes, sir; it is, and by Government agencies, too.

Q. And then with respect to the production figures of non-members, how do you get those? Do you submit them questionnaires?

A. Yes, sir. There is no difference in the kind of report form that we ask members or non-members to send us data on.

Q. And what proportion of returns do you get from non-members?

A. It is very good. We, as a matter of fact, don't issue a report on pack or stocks or shipments of a given commodity unless we have at least 95 per cent of the total number of canners that are known to pack the product, and we make estimates for the remaining that we can't find figures for.

The Court: Do you wish to examine this witness?

Mr. Kuhn: Yes, sir.

Cross-examination.

By Mr. Kuhn:

Q. Dr. Steier, as I understand your testimony, certain of the charts and graphs on pages 8, 10, 11 and 12 are based on sources other than your own information gathering [fol. 1584] sources?

A. That is true.

Q. Such as the U.S. Department of Agriculture, the Census and the like?

A. Yes, sir.

Q. Isn't it true that the data prepared by an organization such as the Census is revised from time to time?

A. Yes, sir: it is.

Q. And might it not be true that some of the material in here, taken from Census data, may have been revised since this was prepared?

A. Yes. That was particularly true of the 1954 Census though, of canning and preserving.

Mr. Handler: Will the witness talk a little louder, please?

A. (Continuing) That was true of the 1954 Census of the canning and preserving industry. There were revisions.

The Court: I take it, this bulletin, published for the year 1957, does not represent any information going beyond that year?

The Witness: That is true.

Mr. Kuhn: But, your Honor, since that year there may [fol. 1585] have been revisions of the data, so that the data relied upon was no longer accurate for that year.

The Court: I see.

Q. Is the U.S. Department of Agriculture data also revised from time to time?

A. Yes, yes, it is.

By the Court:

Q. You mean this data is revised retroactively?

A. Yes, sir. Sometimes they will be revised going back three, four, five years.

Q. So that if you produced the current data of the Department of Agriculture, and anyone sought to introduce here current data, a report issued by the Department of Agriculture, he could look forward to five years of revision?

A. There may be. Not always.

Q. There may be?

A. There may be.

By Mr. Kuhn:

Q. The table on page 10, headed "Production of Various Canned Foods," which I think you probably recall, Dr. Steier, but I will show it to you, is based in part upon [fol. 1586] material gathered by the National Canners Association?

A. Yes, that is principally true for fruits and vegetables and juices.

Q. Now which of the other material in these pages between 8 and 12 are based on your material, that is, as gathered by the NCA?

A. Only the production of the canned fruits and the canned vegetables and most of the canned juices.

Q. And none of the other tables or graphs are so based?

A. No.

Q. Now, I see that the material which relies upon your own data goes back as far as 1938; is that true?

A. That is right, yes, sir.

Q. And goes up to and includes the year 1956, preliminarily.

A. Yes, sir.

Q. Is the underlying data maintained for all of those years, going back to 1938, by the NCA?

A. Yes, sir.

[fol. 1587] Q. It is maintained—

A. When you say "underlying data," what do you mean?

Q. When I say "underlying data," I mean the data which you drew from the packers who made reports to your Association?

A. The individual company reports are not available, if that is what you mean.

Q. The reports are not available?

A. No, sir.

Q. They are destroyed periodically, are they?

A. Yes, sir.

Q. Are they available to any extent?

A. The individual reports are not available to anyone except those of us on the statistic division staff.

Q. I see. But are they in existence to any extent, the reports from the packers?

A. No, sir.

Q. Not even the current ones?

A. In one year.

Q. One year, I see. And from those reports you then make compilations?

A. That is right.

[fol. 1588] Q. And those compilations are the only things that would be in existence, other than the current reports from the packers?

A. Plus the work sheets, the summary sheets.

Q. Plus the work sheets and the summary sheets, and those summary sheets and work sheets made from the summary would be in existence going back to 1938?

A. I am not sure that all of those years would be there. I think they are.

Q. Dr. Steier, during the direct examination you referred to industry estimates as being involved in some of these graphs and tables; would you tell us specifically which ones of the industry the estimates involved?

A. Canned juice is part of the total here.

Q. On page 10.

A. There is a table at the bottom of page 10.

Q. Canned juices involved estimates?

A. And the canned specialties is almost completely estimates. We assembled those statistically ourselves on the canned specialties. This includes the baked beans and canned soups, baby foods, Chinese foods and that kind of things. So that all of that is based upon industry estimates.

[fol. 1589] Q. And how are these estimates gotten?

A. These are based upon census reports, which provide us a bench mark, and then for the intervening year, that is every five years census of manufacturers, and for the intervening years we simply use estimates that we can pick up that are made by any other agency, company, in the industry, that might have published this sort of publication.

Q. Such as?

A. The Western Canner and Packer, for example, which is another canner-packer magazine, that publishes a series of these, annually, or any other basis that we can find.

Q. Do you have any opportunity to check on their estimates?

A. Only reasonableness with respect to the trend that we

think is likely to have occurred in connection with the census there.

Q. And would it not be true that your own material, that is, the material gathered by the NCA, contains estimates?

A. For those canners who don't file a report to us; yes, sir.

Q. Did any other divisions furnish statistics for the material [fol. 1590] on pages 8 through 12 of this exhibit, any other divisions of the NCA?

A. The only exception, I think, would be the estimate of the number of canners and canneries which we talked about a moment ago, based upon a directory.

Q. Yes.

A. That is all. The rest of it are furnished by us.

Q. Now, with respect to the 2700 canners, you indicated that that is based on the canners directory of the NCA.

A. Yes, in part. I am not certain of the true origin of that figure. In the census of manufacturers for the canning-preserving figure, they also contain a figure on number of establishments. But the definition there is not the same, does not have the same coverage as those seven product groups in that table. So there are some differences here of definition. But that plus the directory could have been used.

Q. Well, does the current directory of the NCA carry as many as 2700 canneries?

A. Well, when you say "canneries," I assume you mean canning plants?

Q. Well, I am using the phrase as it appears here. [fol. 1591] It says, "The canning industry comprises about 2700 canneries in 47 states."

A. The directory simply lists companies.

Q. Yes.

A. And the '57 edition shows the location of plants in various states.

Q. Now, would that account for as many as 2700 canneries, do you know?

A. I think that it might have in 1957.

Q. But the current edition?

A. I am not sure. I wouldn't know, no, sir.

Q. Have you any idea how many canneries the current edition might account for?

A. It would be many less. The 1959 edition was abbrevi-

ated edition, and even if it were complete there would be many less.

Q. Do you try to keep track of entries and withdrawals as you compile these directories?

A. I am not close enough to that operation to answer the question. This is compiled by the information division. I am not sure.

Q. You are not responsible for compiling these lists?

A. No, sir.

[fol. 1592] Q. You have used the term "canners"; would you tell me what you mean by that term?

A. Canners?

Q. Yes.

A. When I use the term I am referring to the number of individual companies, separate entities.

Q. Companies doing what, Mr. Steier?

A. Canning the seven major types of canned foods that are listed on that table on page 10.

By the Court:

Q. When you say "canning," you mean under your definition of "canning," as stated in the flyleaf of this publication here, "Canning is a method of preserving food by good cooking done in airtight containers"?

A. Yes, sir. That is, we have a little more technical definition in the Association.

Q. Can you give us the technical definition?

A. We say food that is hermitically—that is heat-sterilized and hermetically sealed and used for human consumption.

By Mr. Kuhn:

Q. Would these foods include jams?

A. No, sir; we do not include jams.

[fol. 1593] Q. Let me ask you about a few. Would they include jellies?

A. No, sir.

Q. Preserves?

A. No, sir.

Q. Beer?

A. No, sir.

Q. Soft drinks?

A. No, sir.

Q. Coffee?

A. No, sir.

Q. Either ground or soluble?

A. No, sir.

Q. Shortening?

A. No, sir.

Q. Chilli sauce?

A. Yes, sir.

Q. Catsup?

A. Yes, sir.

Q. Nuts?

A. No, sir.

Q. Pickles?

A. No, sir.

Q. Condiments?

[fol. 1594] A. No, sir.

Q. Mayonnaise?

A. No, sir.

By the Court:

Q. What is the difference between pickles and nuts, in terms of this definition you used?

A. Neither of these are heat sterilized.

Q. I see. Pickles, you said pickles were in or out?

A. They are out.

Q. They are not canned goods, according to your definition?

A. No, not according to our definition.

Q. Because they are not sterilized?

A. They are not heat sterilized.

Q. Not heat sterilized. Nothing that is not heat sterilized is considered by you to be part of the canning industry as you define it; is that right?

A. Heat sterilized and hermitically sealed and used for human consumption.

Q. Dog food and cat food, for instance, are all out?

A. That's right.

[fol. 1595] By Mr. Kuhn:

Q. Well, would it or would it not be true that some pickles are heat sterilized?

A. Yes, some of them may be.

The Court: But you wouldn't let those pickles in on the ground floor.

The Witness: Our Association does not, in order to keep this.

The Court: You wouldn't even let the good pickles in.

Q. And are those pickles which are heat sterilized sealed in hermetically sealed containers?

A. Yes, sir; they are.

By the Court:

Q. Do you have available a list of products that are on either side of this magic line, or at least are on the canners' side of this magic line? Is there such a list in existence?

A. No, sir; we don't have a complete list of all the products that would be in here, except in so far as they are represented by those seven major groups in the headings and in those captions on the columns in that table on page 10 therein, and they are pretty clear, I think, with the exception of the specialties, which are different.

[fol. 1596] Q. Let me ask you this:

You have got an item called canned fish and canned meat; for instance, there is such a thing, as I recall it, as dried chipped beef, that goes in a glass jar; is that canned food?

A. Yes, sir. I think that is included in the canned meat total there.

Q. That is included.

A. Yes, sir.

Q. Now let's take canned fish. There are certain types of herring that are put up in glass jars; pickled herring. Is pickled herring on the canning side or non-canning side?

A. I think they are in there, too, but here again I am not certain, because the fish figures are assembled by the Bureau of Interior, Fish and Wild Life Service, and I am not sure of that specific type of product that you are raising here, or the canned, or the pickled herring in jars. I don't

know. I would have to check the Department of Interior's inclusion in there.

By Mr. Kuhn:

Q. You have canned fish in this table on the bottom of page 10; would that include cat food?

[fol. 1597] A. Some of the pet food.

The Court: What was that?

Q. Would it include cat food?

A. The Department of Interior does, I know, include in their canned fish figures those pet foods that contain fish. So to that extent canned pet food would be in these figures. But these are the only pet canned food that is in there.

By the Court:

Q. What about canned meat? What about horse meat? Is that in the canned meat category?

A. No, sir; that should not be in there. Presumably, this would not be used for human consumption.

By Mr. Kuhn:

Q. Well, is it, Dr. Steier, or not?

A. Here again it is the Department of Agriculture that makes this definition, and I don't think it is, but—

The Court: So the Department of Agriculture puts canned meat in there or keeps canned meat out, but if you have got canned fish in another department, it goes in; is that right?

The Witness: The pet foods.

The Court: All right.

[fol. 1598] Q. Going ahead with these products I was listing, Dr. Steier, did I reach mayonnaise?

A. Yes.

Q. Frozen juice concentrates?

A. No, sir; none of those are in there.

Q. Frozen vegetables?

A. No, sir.

Q. Frozen fruits?

A. No, sir.

Q. Ripe olives?

A. Yes, they are in there.

Q. Ripe olives are included?

A. Yes.

By the Court:

Q. What about ordinary olives, non-ripe olives?

A. The so-called Spanish olives?

Q. Yes.

A. No, sir, they are pickled, not sterilized.

By Mr. Kuhn:

Q. Vinegar?

A. No, sir.

Q. Prune juice?

A. Yes.

Q. How about food which is preserved by home canning?
[fol. 1599] A. No, sir.

Q. Would it be true that there are many other foods packed in cans and packed in glass containers that are not included in the list of canners that make up this 2700?

A. Yes, there are probably products that are consumed. There are a number of exotic foods that wouldn't be in there.

Q. Are they necessarily all exotic, Dr. Steier?

A. Well, this again depends on the definition.

Q. Well, mayonnaise is a category that is not included; would you call that exotic?

A. No, no. I mean the types of fruits or vegetables, this kind of thing like canned rattle snake meat and canned grasshoppers, they are not in there.

The Court: They are not in there.

The Witness: No, sir.

Q. So in addition to these other things we have been listing, there might be many more, some of which might fall in the exotic classification?

A. That is right.

Q. Is condensed or evaporated milk included?

[fol. 1600] A. That is all included under canned milk category, condensed and evaporated.

Q. That is, on the table on page 10, at the bottom, that is all that is?

A. That is all evaporated and condensed milk?

Q. Now, are the producers of condensed and evaporated milk members of the National Canners Association?

A. No, sir; they are not. Those figures come from the Department of Agriculture.

Q. Now, are there producers of canned meat who are not members of the National Canners Association?

A. Yes, and there are producers who are, too.

Q. Some who are and some who aren't?

A. Yes.

Q. How about canned juices, would that be the same situation?

A. Yes, sir.

Q. Some who are and some who aren't?

A. Right.

Q. And canned specialties, would a similar thing hold true?

A. That's right.

Q. And canned fish, needless to say?

[fol. 1601] A. That's right.

Q. Do you know what products, what end products, the census includes in its listing?

A. Yes. In the census of canning and preserving, these are listed, the major ones are listed individually in the report. However, they have a group that they call "Vegetables not elsewhere classified," which I don't know and which they don't list, which is included in this miscellaneous category.

Q. Could you tell whether or not the miscellaneous category would be a substantial category?

A. In some instances it is fairly substantial, yes, sir.

Q. Do you know what products the Department of Agriculture includes in its listing for end use products?

A. No. They have two kinds of listing that we are talking about here. Are you talking about the canned or the raw product?

Q. Well, take the canned first.

A. No, I am not sure. All the canned meat, for example.

Q. Are there any others?

A. Some of the fish items, about which question has been [fol. 1602] raised here. Again I am not certain of some of those because it is the Department of Interior.

Q. They also list raw products, do they?

A. No—well, the Interior Department lists the landings of the raw fish, yes, as well as canned fish products.

Q. And do you know what products the Interior Department does list in its data?

A. You can tell them by looking at the bulletin. They are more specifically outlined than even the census reports.

Q. Turning for a second to the graph on page 8, Dr. Steier, we have a number of general end uses listed on the left-hand side, can you tell me what "tomatoes" encompasses as they are used?

A. The bar that is in here represents a proportion of the tomatoes that are grown in the United States, that are canned, that go into cans.

Q. Does this include catsup?

A. Yes, sir. That includes not only whole tomatoes but all tomato products, including juice.

By the Court:

Q. Tomato paste, juice?

[fol. 1603] A. Yes, sir.

Q. Catsup?

A. Tomato sauce.

Q. Tomato sauce, chilli sauce?

A. Chilli sauce.

Tomato and tomato products, and its use of tomatoes, the raw product, for canning, tomatoes in any form.

Q. And these figures, I think you told us, all came from the Department of Agriculture?

A. Yes, that's right. The percentage there is based upon the figures of the Department of Agriculture.

Q. This is merely a transference into chart form of percentages from the bulletins officially issued by the Department of Agriculture; is that right?

A. It is a computation of a percentage. They show the tons that are canned, and they also show the total tons produced. We compute the percentage and it is the bar.

By Mr. Kuhn:

Q. Can you tell what tomato products are not included, that is, that account for the difference between 75 or 80 per cent and a hundred per cent?

A. That is the fresh use, the remainder would be fresh, used in fresh form.

[fol. 1604] Q. Coming down to the bottom of that list, grapefruit is listed; what form of grapefruit are taken into consideration there?

A. Just the hot pack single strength grapefruit juice, that which goes into the blended juice, grapefruit and orange, and the grapefruit sections, grapefruit sections or segments.

The Court: That would include frozen grapefruit?

The Witness: No, it is just the hot pack single strength juice.

Q. It would not include, would it, chilled grapefruit sections?

A. No. Again, it is heat sterilized. It is not the frozen.

By the Court:

Q. Now, is it true that under this per cent of "canned" all the way down here, all frozen foods are eliminated?

A. That is correct.

By Mr. Kuhn:

Q. Do you know, Dr. Steier, how the Department of Agriculture compiles the figures upon which your charts and graphs in here are based?

[fol. 1605] A. They are compiled by the crop reporting service from reports that they get from canners of the total tonnage that they can each year. The fresh tonnage and acreage is based upon reports that they get from individual farmers who produce, and estimates are made in individual states and sent to Washington and summarized.

Q. So some of this information is based on estimates sent by individual states?

A. Most of them are, as a matter of fact.

Q. Most of them are based on estimates; is that correct?

A. Yes, sir. They have field offices in the various states.

Q. Do you have any idea, Dr. Steier, how complete the coverage of canners is by the Department of Agriculture?

A. No, not direct knowledge. We think that it is pretty complete. There is some years in which we disagree with them on some of the figures that don't look reasonable, and sometimes our questioning raises further checking on their part and revision sometimes of figures. But it is reasonably complete, considered accurate.

[fol. 1606] The Court: Let's say you have a year in which you disagreed with the Department of Agriculture and the Department of Agriculture disagrees with you, how wide variances do you find?

The Witness: They won't usually be any greater than 5 to 10 per cent.

The Court: That is the maximum variance?

The Witness: Yes, sir.

By Mr. Kuhn:

Q. Now, could you tell me, Dr. Steier, if you know, how the Department of—

The Court: I am sorry, Mr. Kuhn.

How frequently do you find such variance?

The Witness: Oh, there would usually be one or two products each year which we will question the figures. Sometimes after further checking these will be revised. Sometimes they will stand by the figure they have.

[fol. 1607] The Court: Do you notify them when you disagree?

The Witness: Yes, sir.

The Court: Then what will they do, make a recheck?

The Witness: Yes, they will check again with the State officers and ask them to verify the figures that they originally submitted, and go back and recheck them a little more carefully.

By Mr. Kuhn:

Q. Do you know, Dr. Steier, how the Department of the Interior compiles the figures that it compiles and that you rely upon in this Government's exhibit?

A. I am not quite as familiar with that as I am with the Department of Agriculture, but here again they get it from the individual canners in each state. They ask them to report to them the quantities canned.

Q. Does this material come directly from canners or does it come through intermediate sources?

A. I think it comes directly from the canners to the Washington office of the Fish & Wild Life Survey of the Department of the Interior.

The Court: Would sardines be included in that?

[fol. 1608] The Witness: Yes. The major ones in that are sardines, tuna—

The Court: And salmon?

The Witness: And salmon, yes, sir. Those are the three major ones.

Q. Dr. Steier, you have indicated some reservation about whether or not this was actually the way they compiled this material. Do you know as a fact that this is the way in which it was compiled?

A. No, sir, I am not as familiar with that.

Mr. Kuhnr: Your Honor, I wonder if we might have a few minutes to discuss this?

The Court: All right, we will take a brief recess at this point.

(Short recess.)

(The following took place in the robing room:)

(Also present: H. Thomas Austern, Esq., representing National Canners Association.)

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Yes, Mr. Handler.

Mr. Handler: Your Honor, this is the first time on this trial that we have encountered the problem of statistics, and we thought that before we get much further it might be useful if we had a conference with your Honor in chambers.

[fol. 1609] The Court: Yes.

Mr. Handler: We are very much concerned with the way in which the statistical material that is now before the Court has been compiled.

The witness testified that he obtained a great deal of material from three governmental agencies. We think that if statistics are worth anything in this case, they ought to be adduced from the governmental agencies, particularly the gentlemen who compiled the statistics, so that we could have adequate cross-examination to find out just what went into the statistical part of the document.

As it now stands these statistics are offered through a gentleman who, on the stand, indicated a lack of direct knowledge of the way in which the statistics were compiled. Your Honor must appreciate that we have a very significant problem here before you, not only with respect to the statistics, but with respect eventually to their appraisal.

We are not at all concerned in this case with broad generalities and broad classifications. An issue in this case specifically is whether Hazel-Atlas competed with Continental Can. That is an ultimate proposition of fact that is [fol. 1610] being disputed here.

Your Honor, has been told at pretrial that this acquisition has resulted in the elimination of a substantial factor of competition. We do not conceive of competition here as competition between a jar of mayonnaise and a can of salmon. We conceive of competition as competition that exists in the packaging of the identical product in the various packaging materials.

Consequently, it is essential that we have an opportunity to find out the components of these broad categories and what is included in each and every one of them.

Now your Honor has been regaled, partially regaled, this afternoon by the witness' inability to state whether a particular product is or is not included in canning, and then you have the rather bizarre situation where a food item is a canned item and another item is not a canned item. In other words, we must have it specifically stated.

Our first proposition, therefore, is that you do not prove statistics secondhand. The man who compiled the statistics [fol. 1611] ought to be proffered as a witness.

Secondly, with respect to the compilations that this Association itself made, we are unable at this time to determine whether or not any of the statistical items that are before the Court are the sole and exclusive products of the National Canners Association. It is not by any means clear

to what extent there has been reliance here upon what was compiled by others. Hence, much as we dislike it, we think that is necessary, in order for the statistics to be properly appraised and for cross-examination to proceed on a rational basis, for us to know more about the basic raw material from which the statistics were prepared.

That, of course, raises a problem as to the protection of material that normally is regarded as secret. Your Honor knows that our position throughout this case is that we are agreeable to reasonable efforts to preserve secrecy, subject, however, to our right to know what stands behind any of the summaries of statistical compilations that are offered in evidence.

We thought that, since this is the first occasion that we have encountered this problem, and it is going to come up [fol. 1612] many times in this trial, we should have an informal discussion with your Honor to exchange ideas. Not that this is the occasion, perhaps at this moment, to get any definitive ruling, but we do think it would be fruitful to have a discussion.

The Court: Now, what have you to say, Mr. McManus?

Mr. McManus: Your Honor, I am happy to do anything that is necessary here. The only thing is, if Mr. Handler could very succinctly tell me what he wants. He says that he wants two things.

Would you tell me what those two things would be?

The Court: Before we go into that, let me ask you this: Addressing myself now to the first part of Mr. Handler's argument on the statistics that are plainly secondhand in the sense that they come from other sources, is it your intention to call, let us say, the Department of Agriculture or the Census Bureau or the Department of the Interior, as the case may be, because I am frank to say to you, Mr. McManus, that in the absence of those departments and some appraisal by those departments, these figures of the National Canners Association introduced in evidence are also [fol. 1613] lutely meaningless.

And I am not prepared at this time to admit any evidence, particularly in the state of the record this afternoon, in response to the question that I myself asked the witness—I am not satisfied that these are meaningful figures that can be of any assistance to the Court here. And if I did admit

• them, frankly, I would be inclined to say that I would admit them with such qualifications as to their weight as to make them of little if any practical value to the Government.

I am frank to say to you, gentlemen, that really when you come right down to it, the question is not to the admissibility of the figures here, but it is primarily the weight and reliability that can be given to them.

These figures, as they presently stand, are just in a state of such confusion that they mean practically nothing to the Court.

This witness, and I am not impugning his competence or integrity in any way, you understand, Mr. Austern, is unable to tell us a whole lot of things about the figures of these various departments to make them meaningful, and yet he says that at least half or a substantial portion of these [fol. 1613a] tables are based upon such things.

Mr. McManus: Perhaps, your Honor, it would be better to call the people from the agencies and the people referred to—

[fol. 1614] The Court: In other words, I might be inclined, without making any definitive ruling, if people from those agencies were called, to let in their figures and let in these figures as some summary of the other figures or bearing some relation to them.

I am not talking now about the second phase—we will go to that in a minute—but unless we have some better idea than we have now of the reliability of these figures, and not only the reliability but what the figures cover, I am in a state of confusion.

Mr. McManus: I see, your Honor.

Mr. Handler: Your Honor, in view of what you have just said, it may well be that we can defer going into this second phase until we see what the first produces, because once we get to the testimony of the other witnesses, we will have a much clearer idea of what is the work product of the National Canners Association per se.

The Court: Now it seems to me that the longer we can defer this delicate question of going into confidential details, the better off we are, because thus far in this trial it has been the experience of all of us that while you do not usually solve problems by mere postponement, thus far we have, and it could be that the same thing would follow.

[fol. 1615] Mr. Handler: I think that it would be wise, your Honor, if we did defer until we saw the other figures.

Mr. Austern: May I be heard, your Honor?

The Court: Yes, Mr. Austern.

Mr. Austern: With your Honor's permission, I would like to address myself to two points.

The statistics collected by the National Canners Association are governed by the definition of "canning" as contained in its by-laws.

Now having been at it a long time, I must add to what has been said here that the coverage or jurisdiction, if you please, of the various trade associations and the statistics that they collect, is a function of their own peculiar history.

There are other associations, canning associations, and what their definitions mean—

The Court: Would those definitions be likely to overlap in certain cases?

Mr. Austern: I was about to suggest that you will discover that there is an American Meat Institute and their statistics may overlap. There is an Evaporated Milk Institute—I think they are called Institute—they are far more [fol. 1616] learned—

The Court: And do the condensed milk people get into the Evaporated Milk Institute?

Mr. Austern: This is only the Evaporated Milk. Then there are several fish associations. Then on the state levels these things are sometimes called canners of fruits, and the reason that this witness in reporting to your Honor as he did what might happen—

The Court: I was frankly very impressed by the witness as a very competent fellow.

Mr. Austern: He knows what he is talking about, but what he is covering is a 50-year-old history of the National Canners Association.

Addressing myself to the point that I think Professor Handler meant to cover, but he did it rather lightly, is that these figures of the National Canners Association and their coverage are well understood in the trade. They are confidential, they are collected, and, as he testified, he alone sees them and no one else sees them.

The Court: You are talking about the individual figures?

Mr. Austern: The individual canner's numbers, his packs, his shipments.

The Court: Yes.

[fol. 1617] Mr. Austern: The entire integrity of this Association and that whole statistical operation rests on the very simple fact that the canners of the country trust the National Canners Association, that none of their packs, comprised of products and grades, if you will, will ever be revealed, even to the secretary of the Association, and he is the only man who could see the segregated material.

Consequently, if it should become necessary to serve the Court and parties in this case, if they wished to do any checking of the raw data, I should be very happy if at that time we might ask for a protective order—

The Court: You will surely have a protective order under those circumstances. I can give you that assurance now.

Mr. Austern: Thank you.

The Court: And I think that you will find in working out the details of that protective order that counsel for both the Government and the defendant will be most cooperative. I would doubt whether my own interposition would be necessary in any substantial degree, because I think you can work that out among yourselves. If it is necessary, I will be glad to decide whether an issue still remains between you.

[fol. 1618] Mr. Austern: Thank you, your Honor.

The Court: Then I think the procedure is this, gentlemen—let us go off the record.

(Discussion off the record.)

The Court: We are now back on the record.

In the light of our discussion here and my statement, that I would consider that I am taking under advisement the question of admitting all but the statistical portions of this exhibit, merely for the purpose of being general background material, indicating to the Court in general terms how the industry, or how canning operates, and the general procedures and the types of machinery used and type of containers used and the general history of the industry, again in general terms—if that is what you are offering it for it is one thing, and I want to know if that is what you are offering it for, or are you offering it for the truth of the specific statements in this document?

Mr. McManus: Well, we are offering it as a truthful statement of the history and evolution of the canning industry and of these various subsections in the document.

[fol. 1619] The Court: How about this material about what happened during the Directoire in France? Plainly you cannot offer any direct testimony on that subject.

Mr. Johnson: And there is a statement in that document about Nicolas Appert.

The Court: Yes.

Mr. Greenberg: That particular statement, for example, if you want to adduce facts to indicate what Nicolas Appert did, there is a book down in the library at Washington which dates back many, many years, and obviously you would have to wade through it, but this is a summary of it.

Mr. Johnson: Are we interested in or should we be interested in what Nicolas Appert did?

Mr. Greenberg: Well, this is historic insofar as glass containers are concerned.

Mr. Johnson: We realize that, but I am interested in the question as to why you should be interested in that.

The Court: I still come back to the question that I asked Mr. McManus that I don't think he answered fully.

Mr. McManus: Your Honor, you asked me to describe [fol. 1620] the purpose of this document. I cannot remember all of the sub-sections, but this is what we believe to be a truthful statement of the history and evolution of the canning industry, together with certain sections on how machinery operates—excuse me, could I look through it and go through the other sections?

The Court: Yes.

Mr. McManus: The scientific research in the canning industry, the products used in the canning industry, the containers for canned foods, how the canning industry operates, and explanation of the canning procedures, and how canned foods are distributed and marketed, and some information for the buyer, and the nutritive values of canned foods, and then a description of the National Canners Association—we believe the statements in there to be true, and we offer them for the truth of the statements, your Honor. However—

[fol. 1621] The Court: Now, if you are going to go along that line you are going to end up with that stuff being ex-

cluded, because I am not convinced that a very nice young man who is a graduate of the North Carolina School of Journalism, and who is a gentleman, and who writes a promotion piece for the Cannery Association, is qualified to produce material that has evidentiary stature for the truth of the material contained therein.

I have received no evidence on this record to that effect which substantiates that claim. I would be prepared to admit this as a piece of promotional material put out by the Cannery Association, which is their version of what the history of the canning industry is.

To that limited extent I can think it is unobjectionable as an expression by a leading association of how they believe this thing operates, but beyond that I would not be prepared to take it at this time.

Mr. McManus: Now, your Honor, could we offer it to that extent as of right now. If there should be a paragraph or a subsection in there that we would like to get into the truth of the matter, we obviously would have to call someone [fol. 1622] who has written that or who is familiar with that section and then they would have their chance to cross-examine him.

This was pulled together, according to my understanding, by people who happened to be specialists in the various subsections.

Now if we deem that it is necessary to go beyond your description of what you are admitting it for, we would then be required to call those people that were directly involved with that subsection and give the defendants an opportunity to cross-examine.

Is that satisfactory, your Honor?

The Court: I think that a piece of promotional material put out by the Cannery Association, indicating the point of view of the Association to its membership of 700, which in this limited field I think, as far as I am able to ascertain at this moment, is the leading but is not the only national association in this limited field, can be taken in a case of this character for the limited purpose of saying that it is a piece of promotional material put out by such an Association, period.

But I am not taking it for the truth of the facts contained therein at this point.

[fol. 1623] Mr. Handler: Your Honor, we don't want to be burdening you with respect to the truth of a document every time a document is offered in evidence, and I wonder whether it would be agreeable to your Honor and to the Government, when it does offer any part of a voluminous document for the truth of the facts recited therein that they so state on the record and we can then be apprised of what their position is.

The Court: I think that is a fair request.

Mr. Greenberg: Your Honor, may I make just one comment at this point?

The Court: Yes, Mr. Greenberg.

Mr. Greenberg: There is a great deal of information contained in trade journals, in various publications and books, and the Government has photostated or reproduced a good deal of this material. I would think that your Honor might want to look at this material, for whatever aid it can give him, and I believe it does give insights into the various industries involved here and that it would help explain what the testimony is.

The Court: The point is that any material with respect to an industry put out by an authoritative source with regard to that industry is certainly, in my view, admissible [fol. 1624] for the limited purpose of showing what the industry said about itself. But going beyond that, when you are seeking to build a record predicated on, let us say, isolated segments of those documents, it seems to me with respect to any such facts there must be sufficient foundation laid on which the Court had predicate a finding as to whether they are admissible as facts or merely what somebody says about themselves.

Thus far, I am prepared now, with the exception of the statistical section of this document, to admit it for the limited purpose of showing that this is what National Cannery Association, a leading or the leading national association within the canning industry, has defined here, and I think it was defined by the witness as dealing with hermetically sealed heat-treated food products—

Mr. Greenberg: Heat sterilized, your Honor.

The Court: Heat sterilized food products; that this is what the National Cannery Association says about the canning industry, period.

Mr. Austern: Your Honor, while you are on this particular witness, may I inquire of counsel for the Government whether you plan to do anything with the annual pack statistics? Are they likewise involved in this?

Mr. McManus: I don't think that we will have any problem there. I don't think that we will probably use them, and if we don't use them—

The Court: If they do not use them, fine, there is no problem.

Mr. McManus: If we should, we will notify you in plenty of time.

The Court: Before you go, gentlemen, so that everybody will be apprised of where we go from here, Dr. Steier is technically still on the stand. Is there to be further cross-examination of him or further direct of him?

Mr. McManus: We have no further direct.

Mr. Johnson: Do you have any more questions?

Mr. Kuhn: No.

The Court: I am presently reserving on the statistical material, reserving on the offer, pending further proof with respect to the foundation of those statistics.

Mr. Kahn: Your Honor, does that include the entire chapter?

The Court: It includes the entire chapter which is called, [fol. 1626] I think, the economic importance of the canning industry.

Mr. Johnson: And the other statistical references to which the witness referred?

The Court: I think he referred to those in the beginning, but frankly, whether the canning industry amounts to 22 billion pounds or 25 billion pounds or 40 billion pounds, does not seem to me of any great significance, and whether they have a retail value and whether they represent 8½ per cent or 9 per cent or 7½ per cent or 10 per cent, is of no particular significance.

In other words, the generalized figures in that page of things do not seem to me to be of any great importance. I am going to let those in too, and if you disagree with any of those overall figures, you can introduce figures to contest them. I am now simply excluding the economic importance of the canning industry, that whole chapter, because it

seems to me that the considerations I previously mentioned apply to that.

The Court: All right, gentlemen, I am going to rise at 4.30 this afternoon.

What is your next witness?

Mr. McManus: We have a witness with one document, [fol. 1627] your Honor, Mr. Hatfield.

The Court: All right, let us get through with Mr. Hatfield.

(Short recess.)

HOWARD L. STEIER, resumed.

The Court: Is there anything further from Dr. Steier?

Mr. Kuhn: Nothing from the defendant.

The Court: All right, you may be excused. Thank you.

(Witness excused.)

The Court: Next witness.

Mr. McManus: The Government calls Mr. Hatfield.

The Court: What document is Mr. Hatfield going to testify about?

Mr. McManus: 400-A.

The Court: Very well.

ROBERT S. HATFIELD, called as a witness in behalf of the Government, being first duly sworn, testified as follows: [fol. 1628] Direct examination.

By Mr. McManus:

Q. Mr. Hatfield, by whom are you presently employed?

A. The Continental Can Company.

Q. And what is your position with that Company?

A. I am assistant general manager of the Metal Can Division.

Q. How long have you been with Continental Can?

A. 24 years.

Q. Could you go briefly through the positions that you have held with that company?

A. Well, I started in the sales training program and then went through sales offices in the capacity of order clerk, then was assistant to general line sales manager, assistant to packers can sales manager, district sales manager—excuse me, salesman, district sales manager in Milwaukee, district general manager in Chicago, general sales manager in New York, and now assistant general manager of the Metal Can Division.

Q. In November 1947 what was your position with the company?

A. I had no job title at the time.

Q. What were you doing at that time?

A. I was in the New York office, having just finished an [fol. 1629] assignment out on the Pacific Coast and was awaiting a further assignment.

Q. Who was your immediate superior at that time, do you recall?

A. Well, I suspect you would have to say that the vice-president in charge of sales was my immediate superior, because I reported to no one at that moment.

Q. Who would that gentleman be?

A. Mr. Thomas Fogarty.

[fol. 1630] Q. Mr. Hatfield, I show you Government's Exhibit 400-A; is that your signature?

A. That is my signature.

Q. Do you recall preparing this letter?

A. Well, frankly, no. It was 13 years ago. Having seen it, I have a recollection of its having been prepared.

Q. And who is Mr. G. H. Muth, M-u-t-h?

A. Yes. Mr. George Muth is still with the company. At that time, my recollection is, that he was in what we might call market research capacity. I am not positive of that.

Q. And who is this gentleman, Paul Brachle, and what was his position with the company at that time?

A. I believe at that time he was director of packaging and sales.

Q. And you explained before that Mr. T. C. Fogarty was vice-president in charge of sales?

A. He was, sir.

Q. And Mr. Rosenbauer?

A. I am not sure what capacity Mr. Rosenbauer was in at that time. I don't know. It can be checked.

[fol. 1631] Q. You say you recall having prepared the document?

A. Now that I see it, I mean, when it was called to my attention, I recall having prepared it. The content of it being 13 years ago, I just don't recall it completely.

Q. Do you know who asked you to prepare the document?

A. I do not, no.

Q. Do you know what distribution was given other than to Mr. Muth?

A. Well, the copies indicate it.

Q. Other than the carbon copy, was there other distribution?

A. No, I do not know.

Q. Do you recall that along with the document the attachment here of six pages, were they prepared by you?

A. When you say "prepared," I don't exactly know what you mean. As is indicated in the first paragraph of that letter, I would judge that this was a report that was based on information that came into us from the divisions, in other words, from the field.

[fol. 1632] Q. Yes?

A. And I believe that my purpose in this program was to take that data that came in from the field and compile it into a report, and that would be where these figures came from for the most part.

Q. And you in turn sent these on to the people indicated?

A. I did.

Mr. McManus: Your Honor, the Government offers 400-A, G-400-A.

Mr. Hughes: Your Honor, there may be some preliminary examination.

The Court: Yes.

Mr. Hughes: And again I think the distinction between voir-dire and cross-examination tends to merge.

The Court: I think so, Mr. Hughes, but we are not going to be overly technical on that.

Mr. Hughes: Yes, sir.

Cross-examination.

By Mr. Hughes:

Q. Mr. Hatfield, did this document get any circulation outside of the company?

A. To the best of my knowledge, it did not.

Q. Now, at the time when you prepared this document, were you an officer of the corporation?

[fol. 1633] A. I was not.

Q. Were you a director?

A. I was not.

Q. Did you have any power or authority to commit the company?

A. I did not.

Q. Did you formulate policy for the company at that time?

A. I did not.

The Court: There is no doubt about the fact, is there, Mr. Hatfield, that you prepared this document in the course of your duties?

The Witness: No, sir; no doubt.

Q. And that this was not a routine document, was it?

A. I wonder if you could explain "routine"?

Q. Well, how many reports have you ever made during your association with the company?

A. Well, I have made a good many reports. If you are speaking of this subject, Mr. Hughes, then I believe this is the only one I ever did prepare and compile.

Q. Is this the only report on this subject matter that you ever prepared during—

[fol. 1634] A. To the best of my knowledge, that is true.

Q. Now, at the time that you prepared this report, you did not profess to be an expert on marketing, did you?

A. No, sir.

Q. Or an expert on the subject of consumer preference?

A. No, sir.

The Court: How long had you been with the company by then?

The Witness: I had been with the company approximately ten years, your Honor.

Q. And about how old were you at that time?

A. 31.

Q. And you were in between assignments when you prepared this document?

A. Yes, I was.

Q. Now, can you recall what the purpose of this report was as you look back on it?

A. Well, not specifically, Mr. Hughes. Of course, we are always interested as a packaging company in compiling information of interest generally about packages, and I would say that such a report as this would be prepared for information purposes.

[fol. 1635] Q. And am I correct that the first paragraph of your memorandum accurately describes your function, namely, that of summarizing material that came to you from other sources; is that correct?

A. Yes, it came to us from the field sales organization.

Q. And do you have any present recollection of what was contained in that field material?

A. No, sir.

Q. And you don't know whether any of that material is in existence, or its whereabouts; is that correct?

A. I do not; correct.

Q. Now, do you recall whether any action of any kind whatever was taken on this document?

A. I do not recall any action that was taken as a result of that document.

Q. Do you remember what befell the document?

A. No, sir; I do not.

Q. And were the prices of cans in any way affected by this study of yours?

A. To the best of my knowledge, no.

Mr. Hughes: Well, your Honor, that completes my examination.

[fol. 1636] Is there any offer of the document?

Mr. McManus: Yes, there has been an offer, your Honor.

The Court: Yes, it has been offered.

Mr. Hughes: For what purpose?

The Court: I think that is a fair question.

Mr. McManus: Your Honor, we think that this document, along with the others, shows the concern that this company has of competition from glass containers.

Now, we are not saying that every piece of information in this document is true, because obviously this gentleman doesn't know, or at least he says he doesn't know the price per thousand of glass containers for ravioli or something of that nature. But it does indicate that this company was at least concerned with the price of glass containers to have Mr. Hatfield assemble this data and to send it to the vice-president in charge of sales, and to Mr. Muth, who, did you say, was in commercial research?

The Witness: Market research.

Mr. McManus: Market research.

The Witness: I think that was his capacity at the time. I wasn't quite clear, Mr. McManus, what his assignment was.

[fol. 1637] Mr. McManus: And we think, your Honor, it does show the concern of the can companies for competition that they are presently having or have had from glass containers.

Mr. Hughes: Well, your Honor, it seems to me that first, as I understand it, it is not being offered for the truth of any facts or purported facts stated therein.

The Court: That is as I understand it.

Mr. McManus: That is correct.

Mr. Hughes: And I object to it for the purpose for which it is being offered, on the ground that no proper foundation has been laid and that it is not admissible either as an admission or as a business record under Section 1732.

The Court: Your objection is overruled. It will be admitted for the limited purposes for which it is being offered.

(Government's Exhibit 400-A for identification received in evidence.)

The Court: Anything further with this witness?

Mr. McManus: No, your Honor.

[fol. 1637a] The Court: All right, you may step down, Mr. Hatfield. Thank you.

(Witness excused.)

The Court: We will now take a recess and adjourn until 10.30 tomorrow morning.

(Adjourned to June 28, 1960, at 10.30 a.m.)

[fol. 1638] New York, June 28, 1960; 10.30 o'clock a.m.

Trial resumed

The Court: All right, Mr. Greenberg.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. White.

The Court: All right, have Mr. White take the stand, please.

Mr. Greenberg: Your Honor, Mr. White's testimony will relate to a series of documents.

The Court: I think I have the numbers noted here.

Mr. Greenberg: Yes, you do.

The Court: The clerk will get them before me, but first swear the witness.

H. FERRIS WHITE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Now, before you start, what is your procedure here? Are you going to take these in numerical [fol. 1639] order?

Mr. Greenberg: No, your Honor. We will first refer to the minutes of meetings which commence with Government's Exhibit 139 for identification.

The Court: Running through to what?

Mr. Greenberg: Running through 170, your Honor, the balance of the book.

The Court: These are all minutes of meetings, are they?

Mr. Greenberg: Minutes of meetings or documents which have been appended or attached to minutes of meetings.

The Court: All right.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Pardon me?

Q. Where do you reside, sir?

A. Mr. Greenberg, I am a little bit hard of hearing, so will you please speak a little louder. The office is at 821

15th Street Northwest, Washington, and I reside in Alexandria, Virginia.

Q. You are employed by the Can Manufacturers Institute?

A. That is correct.

[fol. 1640] Q. How long have you been employed by it?

A. Since the inception, which was the beginning of 1939.

Q. What positions have you held with the Can Manufacturers Institute?

A. The positions have all been the same with three different titles. First I was vice-president, then executive vice-president, now called executive director.

Q. Sir, what in general have been the activities of the Can Manufacturers Institute during your experience with it?

The Court: How long have you been with the Institute, Mr. White?

The Witness: Since inception, your Honor; that is 1939 it was started.

The Can Manufacturers Institute has a very small staff of three people. As a consequence it has to operate through a series of committees drawn from its membership. Those committees deal with different items, for example, a traffic committee, industrial relations, safety, research, promotion, food additives recently. That in general are the main committees.

Q. When you say promotion committee, what do you mean [fol. 1641] by that?

A. Over the years there have been promotional efforts carried on by a separate committee set aside from the CMI proper, but nevertheless functioning and reporting to the CMI.

Q. Was Dr. Miller McClintock employed by your organization from February 1, 1941 through December 31, 1942?

A. Yes, he headed our research division.

Q. And he passed away just recently, is that correct?

A. Yes.

Q. What was his position during his employment with the Can Manufacturers Institute?

A. Director of what was called the research division.

Q. What did the research division do during his tenure?

A. During his tenure the research division was initially set up to explore and determine whether or not it would be to the advantage of the can manufacturers, the tinplate manufacturers, to spend monies in promotion of cans and therefore tinplate. That was part of that function. It was interrupted by the defense period, when the research division [fol. 1642] was turned to developing facts and figures supporting our position in Washington.

Q. Sir, was such money expended for promotional activities after the termination of Dr. McClintock's services?

A. After the termination of his services an advertising division occupying the same physical space but with an advertising director carried on advertising activities.

Q. And that began in 1943, is that correct, approximately?

A. I think that is correct.

[fol. 1643] Q. And what was their function? What was their work?

A. The promotion of cans, and therefore tinplate.

Q. Through what media?

A. Through what media?

Q. Yes.

A. Benton & Bowles was retained, so they used the usual advertising media of magazines, plus activities to determine vitamins in canned food—the usual advertising agency routine.

By the Court:

Q. Let me ask you this, Mr. White:

Who comprises the membership of the Can Manufacturers Institute?

A. The Can Manufacturers Institute, currently, your Honor, we have 49 members, all accredited can manufacturers.

Q. Does that include most of the leading American, Continental, National, and so forth?

A. It would represent, sir, better than 90 per cent of the production of the industry.

Q. And in connection with this, are any of the tinplate manufacturers members?

[fol. 1644] A. No, sir.

Q. But they agreed to cooperate on the campaign that you spoke of?

A. Yes, your Honor.

Q. Did they supply some financing for the campaign, too?

A. Yes, sir.

Q. It was a jointly financed enterprise?

A. At one point it was solely financed by the tinplate manufacturers. Then later on it was joint.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, does the Can Manufacturers Institute have a board of directors?

A. Oh, yes.

Q. And how are the members of the board of directors selected by the Can Institute?

A. Well, it is a rather complicated method, but I can't tell you out of memory. It is in the by-laws, it is set forth in the by-laws. At one time it was based on a number of plants, and I think we changed that, and I am sorry, but I cannot tell you right now.

Q. Is it the number of employees, sir?

A. What?

[fol. 1645] Q. Number of employees?

A. The dues are based on number of employees engaged in can manufacture.

Q. Now, in June of 1949, or thereabouts, did a marketing bureau succeed to the duties and responsibilities and functions of the advertising division?

A. I can't quite accept that statement, Mr. Greenberg. They succeeded the advertising division, but it was an entirely different philosophy of promotion.

Q. What did they do, generally?

A. Operating on a much smaller budget, the can manufacturer always has difficulty in trying to aid any of his customers, because the man with the largest pack always wants that aid. The philosophy behind the marketing bureau was that they would help guide anybody who was willing to help themselves to some degree, so that they could get behind the pimiento packers and some small ones and not necessarily just the big ones.

Q. Sir, I am going to refer now to the minutes of your Association, and I show you Government's Exhibit 139 for identification and ask you if you recognize it.

A. Yes.

[fol. 1646] Q. Would you tell us what it is?

A. Well, those are the minutes of a special meeting of the administrative committee for the Research Division of the Can. Manufacturers Institute, Monday, March 10, '41.

Q. Sir, there is indication that certain individuals were present.

A. Correct.

Q. Would you identify what positions they held?

The Court: Well, now, in the first place let's ask Mr. Hughes, with respect to these minutes, what is your position with respect to them, so that we know the extent to which we have to take proof on them?

Mr. Hughes: Perhaps I can answer that, your Honor, by just asking a couple of questions with respect to this particular document, and then not burden the record with similar questions.

The Court: That would be fine, I think. Do you want to do that now?

Mr. Hughes: Yes.

The Court: Let's do that now and clear whatever underbrush away we can clear away.

Mr. Greenberg: We are agreeable to that, your Honor. [fol. 1647] The Court: Now try and keep your voice up for Mr. White, will you, please?

Mr. Hughes: Yes.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, you did not prepare these minutes, of which G-139, I take it, is typical; is that correct?

A. That is correct.

Q. By whom were they prepared?

A. By one Clifford E. Sifton, who was secretary at that time.

Q. And did Mr. Sifton have working notes of the meetings from which he drew to prepare these minutes?

A. That is correct.

Q. And are those working notes in existence today, so far as you know?

A. No, sir.

Q. Did you attend the meetings of the administrative committee, as I see it is called, administrative committee for the Research Division? Did you attend those meetings?

A. Yes, sir; in an observer's capacity.

Q. That is to say, the membership itself was made up of members of the board, and you attended in an ex officio capacity; is that correct?

[fol. 1648] A. Well, if "ex officio," sir, means sort of observer's capacity, yes, sir.

Q. You were an observer to see and observe what was happening and to be abreast of what was happening and to be in a position to implement any decisions that might be made where it was necessary for you to do the implementation; is that correct?

A. That is correct.

By the Court:

Q. Now, are these minutes, Mr. White, kept in the files of the Can Manufacturers Institute?

A. Yes, your Honor.

Q. They are kept regularly in those files? Is that a complete record of these minutes, is it, as far as you are aware?

A. As far as I am aware, yes, sir.

By Mr. Hughes:

Q. Now, at the time of the existence of the administrative committee for the Research Division, at the time when that was in existence, did it hold its meetings at a place separate and apart from the regular offices of the Can Manufacturers Institute?

A. The Research Division and the Advertising Division, which subsequently became the Marketing Division, had [fol. 1649] offices on the same floor, but separate and apart from the CMI offices.

Q. Well, your main offices were in Washington, were they not, the offices of the Institute were in Washington; is that correct?

A. We had two offices, Mr. Hughes, our office in Washington, where I was resident, and an office in the Lincoln Building.

Q. And the committee to which we have been referring made its headquarters up here in New York; is that correct?

A. That's right.

Mr. Hughes: Now, your Honor, before I indicate whether I object or don't, I would like to know the purpose of the offer.

The Court: I think that is a perfectly fair question, and, Mr. Greenberg, will you tell us what the purpose of these minutes are?

Mr. Greenberg: Your Honor, this minute of the meeting on the day held, as well as the subsequent minutes of meetings, report the events as they occurred during the meetings of the administrative committee. But they also indicate, your Honor, the Can Manufacturers Institute concern with competition from other forms of packaging material, including glass containers, and in some instances mainly glass containers. They authorized Dr. Miller McClintock and his staff to conduct various surveys to determine what their advertising approach, if any, would be in the future.

The Court: Of course, this first one authorizes the retainer apparently on its face of something called the Psychological Corporation, at \$600 a month. Now, is that merely part of a chain of events that you seek to establish?

Mr. Greenberg: Exactly, your Honor. When read together with—

The Court: Because by itself this is of no significance.

Mr. Greenberg: I fully agree with you, your Honor. But all of the minutes of meetings taken together with the other exhibits which have been marked, surveys of various types, we think indicate what I just asserted.

The Court: They show various activities of the Canners Institute with respect, you say, to the subject, among others, of competition with glass.

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: Well, do I understand that one of the purposes [fol. 1651] of the offer is to show activities of the Institute? Is that one of the purposes?

Mr. Greenberg: Now, the purpose of the entire offer, of all the documents, the minutes of meetings and the surveys, which I will inquire into, will be put into that purpose.

Mr. Hughes: Well, I object to it for any such purpose on the ground that it is irrelevant and immaterial.

The Court: Overruled.

Mr. Greenberg: I have just one question at this point with respect to this minute.

By Mr. Greenberg:

Q. Sir, have you ever had any inquiries questioning the accuracy of this minute?

A. No.

Q. And would the same be true—

Mr. Greenberg: Withdrawn.

The Court: All right.

Mr. Hughes: Now, your Honor, I think I can save time and say that as these documents are offered, the line of questions that I would propound would be substantially the same as to each of them.

The Court: And you would raise the same objection as to [fol. 1652] each of them.

Mr. Hughes: I would.

By the Court:

Q. Have you examined the various minutes that are referred to here by the Government, Mr. White?

A. In most cursory fashion, your Honor. They were desired by counsel and we delivered them.

Q. Well, you think you see enough of them to be able to say that your answers to the questions asked you by Mr. Hughes with respect to this first minute would be the same with respect to the others, substantially?

A. I am not sure that it is clear in my mind just what you are asking me about.

Q. Well, Mr. Hughes asked you a series of questions directed at the minutes of March 10, 1941, that we have just been discussing. Would your answer, if the same questions

were asked you, with respect to the minutes of May 12, '41, of June 9, '41—

A. I'd say virtually, yes, sir.

Q. —of July 14, '41; of October 14, '41?

A. Yes, sir.

Q. Of November 10, '41; November 17, '41, would your answer to those questions be substantially the same?

[fol. 1653] A. Yes, your Honor.

The Court: Very good.

Now that doesn't preclude you from asking any questions as you go along.

Mr. Hughes: Yes.

The Court: As to the subject matter of the minute, Mr. Hughes?

Mr. Hughes: Yes, sir; I understand that, and I just want to ask one more preliminary question.

By Mr. Hughes:

Q. Mr. White, did you personally have anything to do with the activities of this marketing research committee, or whatever its name was?

A. No, sir; other than to attend as an observer the meetings that were held.

[fol. 1654] The Court: Did the marketing research committee or the administrative committee, whichever it was, keep you informed of what it was doing?

The Witness: Sir, I attended the meetings when they had them, but they were under, in each case, a director and it was his responsibility. I was busy in Washington with war conditions and—

The Court: Did the director report to you or not?

The Witness: He reported only in committee meetings.

The Court: Only in committee meetings?

The Witness: That's right.

The Court: Very good.

By Mr. Hughes:

Q. This director was the Dr. Miller McClintock to whom allusion has been made, is that right?

A. Pardon me?

Q. The director was Dr. McClintock?

A. He was director of the research division.

Q. And it was not part of his duties to report to you but it was his duty to report to the committee, is that correct?

A. That is right.

[fol. 1655] Direct examination Continued.

By Mr. Greenberg:

Q. And the committee we are referring to is the administrative committee, is that correct?

A. The committee over the research division, that is correct.

Q. At any rate, the minutes of meetings here reflect the reports of Dr. McClintock's committee?

A. That is right.

Mr. Greenberg: Your Honor, so that I fully understand the procedure now, am I going to show the witness each of these documents?

The Court: No, I have already referred by date to Exhibits 139 through 150, inclusive. As a matter of fact, I did not refer to 150.

I will ask you, Mr. White, about this exhibit. Exhibit 150 is the minutes of meeting of the special committee of the administrative committee for research on January 19, 1942, and I assume that your answers with respect to questions similar to those asked by Mr. Hughes would be the same for this document?

The Witness: That is right, your Honor.

The Court: So that we have covered, as I understand it—

Mr. Greenberg: This goes to 170, your Honor.

[fol. 1656] The Court: I am only talking now about minutes, and the last minutes that I see here is December 14, 1942, which is 166. Am I correct in that?

Mr. Greenberg: Your Honor, the minutes you referred to refers to the report which we have marked G-167, and that is really an attachment to it and a part of the minutes of meeting.

The Court: I see. And then 168, 169 and 170 are exhibits attached to that report, are they?

Mr. Greenberg: We believe that to be so, your Honor.

The Court: Well, perhaps we better first then take the minutes through 166.

Do any of the other minutes have exhibits attached to them?

Mr. Greenberg: Yes, your Honor. There is at least one other exhibit which has an attachment.

The Court: Mr. Hughes, may I ask you, have you any questions about the exhibits attached to the minutes?

Mr. Hughes: Well, I think I may have some questions which have reference to those exhibits.

[fol. 1657] The Court: What I am getting at is this: do you raise the question as to whether the exhibits were actually attached to the minutes or not?

Mr. Hughes: I would just like to have the witness's answer. I just do not know, your Honor—

The Court: All right.

Mr. Hughes: And I would like to have the witness's answer.

The Court: Then let us try and take all the ones without exhibits, up to the one where there is an exhibit, and that goes to 157, I think.

Mr. Greenberg: No, your Honor. There is an exhibit attached after G-146 and this is entitled "Digest of Recommendations Presented to the Administrative Committee of the Research Division by Dr. Miller McClintock."

The Court: Then 139 to 145 will be admitted.

Mr. Hughes: Could I just add an additional ground of objection, the ground of hearsay?

The Court: Overruled.

(Government's Exhibits 139 through 145 for identification received in evidence.)

Mr. Greenberg: Your Honor, may I just ask the witness if his answers to my questions equally apply to all the [fol. 1658] minutes of meetings enclosed within this exhibit book?

The Court: You have got it and you don't have to ask any more questions when the exhibits are in.

Mr. Hughes: Your Honor, I do want to be sure that I understand the basis on which your Honor is taking these documents.

For example, in G-147 there is a statement, a sort of an opinion statement, a recommendation by Mr. McClintock, and the minutes state, if your Honor will turn to paragraph 2, where there appears a conclusory observation.

The Court: You are talking about 147 now?

Mr. Hughes: Exhibit 147.

The Court: "It is further concluded" and so forth?

Mr. Hughes: Yes, sir, your Honor.

Now there are used there the words "competitive types of containers," and again you get into this whole subject matter of the whole basis of this lawsuit. We are saying that that is something that your Honor has to decide and nobody can decide it for you, and we do not want a document to [fol. 1659] come in on the theory that it gives the whole picture of the can manufacturers and is later to be used as evidence that somebody, either the Institute or some of its constituent members regarded certain containers as having been of a competitive type within the meaning of competition as we feel it has to be interpreted by your Honor. So we do not want—

The Court: Let us understand one thing, Mr. Hughes. The decision in this case is not going to be made by the Can Manufacturers Institute, it is going to be made by me.

Mr. Hughes: Yes, sir.

The Court: That is No. 1.

Mr. Hughes: Yes, sir.

The Court: No. 2, as I view it, this evidence is coming in to show what the Can Manufacturers Institute, representing, as Mr. White testified, 90 per cent of the can manufacturing industry, did through one of its official committees.

Now, insofar as it goes beyond what the Can Manufacturers Institute did, or indeed as to any points of view that it expressed, which may be relevant here, insofar as it goes beyond that, I am not taking it for any other purpose, and [fol. 1660] I don't think Mr. Greenberg is offering it for any other purpose.

Is that correct, Mr. Greenberg?

Mr. Greenberg: That is correct.

The Court: Is that clear now?

Mr. Hughes: I think it is, your Honor, yes.

Mr. Greenberg: What stage are we at now, your Honor?

The Court: Well, I understood that you had offered 139 through 145, inclusive, and that I have ruled.

Mr. Hughes: Same objection.

The Court: Same objection, Mr. Hughes. All of Mr. Hughes' objections apply to all of the exhibits and they are all overruled.

Mr. Hughes: That brings us to—

The Court: That brings us to 146. Mr. Clerk, you can make notes and actually mark these physically later.

The reason that I have permitted further discussion with respect to 146 is because 146 has an exhibit which purports to be annexed, and if you wish to ask any questions about it, you may. If not, I will permit Mr. Hughes to question Mr. [fol. 1661] White about that.

Mr. Greenberg: I did want to correct one error at this juncture. Through overzealous tabbing, your Honor, we simply tabbed the second page of the minutes of the meeting of November 17, 1941, as G-146, but G-146 is really part of 145, and the attachment is G-147.

The Court: Then we will eliminate G-146 entirely.

Mr. Greenberg: Yes, sir.

The Court: Because it is only an extra page of 145.

Mr. Greenberg: Yes, sir.—

The Court: Which brings us to G-147.

Mr. Greenberg: Yes, your Honor.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 147 for identification and ask you if you recognize it?

A. Yes.

Q. What is it?

A. A digest of recommendations presented to the administrative committee, the research division of the Institute, but Dr. Miller McClintock.

Q. And did this come out of your file?

[fol. 1662] A. I believe it did.

Q. And, sir, is it part of Exhibit G-145 for identification which constitutes the minutes of meeting for November 17, 1941?

A. Is this document that you are asking me to identify part of another document?

Q. That is correct.

A. It appears to be, from the context of the minutes.

The Court: All right, Mr. Hughes.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, did you have anything to do with the preparation of this Digest of Recommendations which is Exhibit G-147?

A. Nothing whatsoever.

Q. And you are not in a position to tell us what Dr. McClintock did or anyone on his staff did that led him to prepare this Digest of Recommendations, is that correct?

A. That is correct.

Q. Now while we are about it, at the time when this research bureau was set up, wasn't there some concern among the can manufacturers because of the growth of frozen foods?

[fol. 1663] A. There was concern of competition with frozen foods and lockers which were growing up around the country, and fresh foods—all competition, that was the promotion of cans per se.

Q. And this program that we are talking about was not aimed at the glass container as such, was it?

A. Aimed at promoting cans, sir.

Q. And aimed at promoting and setting forth to the public the advantages of the can as a container, is that correct?

A. Correct.

Q. And at the time, at this time of which we are speaking, was there also concern about the growth of the so-called fresh foods industry?

A. Well, in the promotion of cans, Mr. Hughes, we conducted studies as to the vitamin content of canned foods compared with so-called fresh to the advantage of canned foods.

The Court: What do you mean by "so-called fresh"?

The Witness: So-called fresh, your Honor, is when they come from the Coast or some place, long distances, and they are held overnight, and finally they appear in your retail [fol. 1664] market. We don't think they are very fresh by the time it gets there.

Q. And if I may summarize the whole purpose of the project, it was to focus the attention of users upon the advantages of the can as a container as distinguished from any other type of packaging material; is that a fair statement of it?

A. That is a fair statement.

Mr. Hughes: Well, your Honor, I object to this.

The Court: On what ground?

Mr. Hughes: Irrelevant and immaterial and hearsay and no proper foundation laid.

The Court: Well, I call your attention to the fact that the minutes are dated November 17, 1941, and this document is dated November 25, 1941. That is why I asked what the basis of your objection is.

Mr. Hughes: That is an additional ground of objection, your Honor.

Mr. Greenberg: Your Honor, the body of the document or the title "Digest of Recommendations," indicates that they apparently contemplated submitting it on November 17, 1941, but it was executed at a later time, and I would assume that the officials of the Can Manufacturers Institute [fol. 1665] merely appended it to this exhibit.

At any rate, when we acquired the minutes of meetings of this Can Manufacturers Institute, we did not in any way, or at least did not intend, to plagiarize or upset the numbering system that they used and so we just put the document in as it was.

The Court: Well, being technical about this, I don't see any reference to this document per se in the minutes, or any statement in the minutes that appended thereto is a document entitled "Digest of Recommendations" et cetera.

Now, if at some future meeting the minutes of this meeting with the document appended were approved or something of that nature, then it goes in as part of the minutes.

Mr. Greenberg: Your Honor, most respectfully, there is

a reference to these recommendations in the fourth paragraph down, which reads:

"In view of the unavoidable absence of several members from the Board of Governors meeting on Monday, November 10th, Dr. Miller McClintock repeated in shorter form his comprehensive preliminary report on the work of the research division covering the past [fol. 1666] nine months, outlined his conclusions, and made specific recommendations for the future program of the research division."

The Court: That is perfectly true.

Mr. Greenberg: And in the last paragraph of the Digest of Recommendations, which is G-147, which is signed by Dr. Miller McClintock, he says, "The above is a true and accurate digest of the conclusions and recommendations which in principle were approved by the administrative committee of the research division at a meeting held on November 17, 1941."

And, as I said, your Honor, we received the minutes of meetings in that form, and, of course, we did not want to change the order.

Mr. Hughes: Your Honor, it seems to me that this points up the whole problem of what we are confronted with when there is a mass offer of documents of this kind.

Mr. White acknowledges that he does not really have any knowledge about this document and we are powerless to cross-examine the document itself.

I also urge, your Honor, that all of these minutes are so [fol. 1667] remote to any time that we are now dealing with that—

The Court: That may be, Mr. Hughes, but that is a matter of argument.

Mr. Hughes: Well, your Honor—

The Court: That is a matter of argument and weight.

Mr. Hughes: Well, I press it as an additional reason why the document should be excluded. It seems to me that we are put in the position where these documents come in in this broad fashion, and while it is true that your Honor has carefully indicated some limitations, we are in the perilous position where there has crept into these minutes some

statements of fact or some things that might be a mixed question of fact and opinion, and there is always the danger that we have not had the opportunity either to explain that fact or to disprove it as a fact.

So that I can only repeat that it does seem to me that the taking of these documents in this wholesale manner does effectively deprive us of the opportunity of cross-examination in many respects.

The Court: That may be, but the difficulty lies, Mr. Hughes, in the rules of evidence, I think, and not in anything [fol. 1668] else.

The only question now is 147.

With respect to 147, are you familiar with Mr. McClintock's signature? Do you recognize it, Mr. White?

The Witness: Your Honor, that was back in 1941. That looks, as I remember it, and I would think that that was his signature, but I can't at that distance swear to it.

By the Court:

Q. Can you tell us where this came from, this document?

A. Well, from our files.

Q. Do you know which files?

A. No, sir, I don't.

Direct examination Continued.

By Mr. Greenberg:

Q. Sir, don't you have bound minute books?

A. Pardon me?

Q. Don't you have bound minute books which you showed me?

A. That's right.

Q. Doesn't that document come out of those bound minutes books?

A. I don't know. I presume it might have; I can't tell you.

[fol. 1669] The Court: I am not going to let it in if you cannot tell me where it came from, because, Mr. Greenberg, let it be quite clear, that because Dr. McClintock made some oral recommendations to a meeting and perhaps later made

a memorandum of it, does not mean that they were part of the minutes of the meeting.

Mr. Greenberg: Your Honor, we reproduced or photostated the originals of the minutes of meetings. We thought that we had a stipulation from Mr. Hughes that the reproductions or photostats would be equally admissible with the originals. We could have subpoenaed the books and records of the Association, but we assumed that since we had this stipulation that that would not be necessary.

I would like to approach the Bench, your Honor.

The Court: Well, you don't have to approach the Bench.

Mr. Greenberg: This is on another point.

The Court: On another point?

Mr. Greenberg: Yes. Would you join me, Mr. Hughes? [fol. 1670] (The following took place at the Bench.)

Mr. Greenberg: Your Honor, the law firm which represents the Can Manufacturers Institute is Mr. Hughes' firm. Mr. Garvey, who is mentioned as being present at this meeting, was the man who apparently had reviewed all of those matters, and we can, of course, subpoena him—

The Court: That is something that is a tempest in a teapot about this particular document. If this was appended to the minutes of the meeting and included in the minute book and there is a minute book, I am going to let it in.

Mr. Hughes: Your Honor, I just don't know what the fact is.

The Court: Then check it and let me know and apprise me as to whether it is appended or not. The Government represents, I take it, that it was appended?

Mr. Greenberg: Yes, we do.

The Court: I am going to let it in subject to a motion to strike.

Mr. Hughes: Your Honor, as long as this subject has been presented to you, I think your Honor should know that Mr. White is being separately represented by counsel.

[fol. 1671] The Court: He is?

Mr. Hughes: Yes, of his own choosing, and Mr. Edward J. Bennett is here in the courtroom. He has been quiescent but he is here.

The Court: If Mr. Bennett wants to be heard at any time I hope he understands that I will hear him.

Mr. Hughes: We have told him that, your Honor.
The Court: Very good.

(The following took place in open court,)

The Court: 147 is admitted subject to a motion to strike.
(Government's Exhibit 147 for identification received in evidence.)

Mr. Greenberg: Your Honor, I understand that we are now to go through these minutes one at a time, is that correct?

The Court: Well, only in the sense if they have exhibits, Mr. Greenberg. Let us take them as I have them here.

148 has none, and that will be admitted subject to Mr. Hughes' objections which I have overruled.

[fol. 1672] 149, the same thing:

150, the same thing.

151 appears to be a second page of 150. That is eliminated and there will be no 151.

152, the same thing.

153 is the second page of 152 and is out of the record.

154, the same thing.

155 is the second page of 154 and it is out of the record.

156, the same thing. 157 is the second page of 156 and is eliminated.

158 has some exhibits.

By Mr. Greenberg:

Q. I show you Government's Exhibit 158 and ask you to identify it.

The Court: 158, Mr. White, is another set of the minutes, is it not, that we have been talking about?

The Witness: Yes, sir.

Q. That is Mr. Siffron's signature, is it not?

A. That is right.

Q. And he was secretary of the Association?

A. That is correct.

[fol. 1673] Q. And his signature appears on other minutes of meetings, isn't that correct?

A. I believe on most of them, it does.

The Court: 159 is the second page of 158 and that is out. What about 160, what does that purport to be and where did it come from?

The Witness: The body of the minutes, your Honor, seems to state that Dr. McClintock submitted two financial reports.

The Court: And those would be statements of expenditures for May?

The Witness: For May, and an itemized list of carryover expenditures deductible.

Mr. Greenberg: The Government has said, your Honor, that G-160 and G-161 are attachments to G-158 and are referred to in the body of Government's Exhibit 158.

The Court: They appear to be the exhibits referred to in the minutes. Do you want to question about that?

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, do you know whether Exhibits 160 and 161 that the Court referred to are referred to in G-158?

[fol. 1674] A. Whether they are the ones referred to in 158, Mr. Hughes? In the minutes of 158 it says statement of expenditures of a certain date. The first one would seem to be so labelled. The second one I can't find as being labelled in quite the way it is referred to and I don't know.

Mr. Greenberg: This has a reference to the 1941-1942 operations here.

The Court: Subject to a motion to strike in the event that you discover they are not in the minute book, I am going to admit them.

Mr. Hughes: Your Honor, may I inquire what the purpose of the offer of Exhibits 160 and 161 is?

Mr. Greenberg: Your Honor, we offer them for the same purpose as was described for the prior minutes of meetings.

The Court: You mean merely as part of the activities of the Can Manufacturers Institute?

Mr. Greenberg: That is correct.

The Court: All right.

Mr. Hughes: The same objection.

The Court: Overruled.

Now 162 seems to be minutes without any exhibits. The

minutes of July 13, 162, will be admitted on the same conditions and under the same rulings as the previous minutes.

163 is out since it is the second page of 162.

164 appears to be the minutes of November 7th and that will be admitted on the same conditions and under the same rulings as the previous minutes.

165 is the second page of 164 and that is out.

166 has various exhibits attached to it. Let us proceed to 166.

Direct examination continued.

By Mr. Greenberg:

Q. Now I show you G-166 for identification. Can you identify this as a minute of the meeting of the administrative committee of the research division?

A. It appears to be unsigned but it has a regular format of minutes.

Q. Sir, I direct your attention to the No. 47 at the top of this sheet.

A. Yes.

Q. What does that indicate?

A. I don't know what No. 47 indicates.

Q. Do you number your minute books?

A. Pardon me?

Q. Do you number the pages of your minute books?

[fol. 1676] A. I don't know whether we do or not. This is not my job.

Q. Have you seen the minute books?

A. Yes, indeed; of course I have.

Q. And there are numbers at the top, are there not?

A. I don't know whether there are numbers at the top.

Mr. Greenberg: At any rate, your Honor, G-167, which the Government asserts is an attachment, is referred to on the first page of 166, and the fourth paragraph, where it is stated that "Mr. Heekin read the attached report and the Research Division's technical committee composed of Mr. J. J. Vertrees and Mr. H. A. Goodwin."

[fol. 1677] The Court: What about 168?

Mr. Greenberg: Your Honor, I would like to have a moment to discuss this with my associate.

The Court: All right, we will take a brief recess and let you do it.

You might want to look through those, Mr. Hughes, so as to be familiar with them.

(Short recess.)

The Court: All right, where do we stand with respect to 166 and the exhibits appended thereto?

Mr. Greenberg: Your Honor, the Government offers and believes it has offered G-166 and G-167. G-167, we respectfully suggest, your Honor, is clearly referred to in G-166 as an attachment.

The Court: What about 168, 169 and 170?

Mr. Greenberg: Your Honor, we have discussed these three exhibits and we have concluded quite frankly that they may not be attachments to minutes.

The Court: You are not offering them at this time.

Mr. Greenberg: And we are not offering them at this time for that reason. However, we do say they came out of the files of this Association, but we will reserve questioning to a future date.

[fol. 1678] The Court: All right.

Now anything on 166 and 167, Mr. Hughes?

Mr. Hughes: No, your Honor, just the same objection.

The Court: Same rulings. They will both be admitted.

(Government's Exhibits 166 and 167 received in evidence.)

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 136 and ask you to identify it?

A. That was a document prepared by the Research Division.

Q. And that was Dr. Miller McClintock's division?

A. That is right.

Mr. Greenberg: I offer G-136.

The Court: Now tell us what the purpose of 136 is.

The Witness: The purpose, your Honor—

The Court: Excuse me, Mr. White, I am addressing that question to Mr. Greenberg.

Mr. Greenberg: Your Honor, G-136 purports to be a breakdown of the various kinds of products which utilize or which did utilize tin cans in 1940, and we believe it is the [fol. 1679] product of a questionnaire which reported base boxes and then was converted into tonnage. There is another section of that document which is a 1942—

The Court: For what purpose do you offer this information?

Mr. Greenberg: Well, we offer it for the truth of the facts stated therein, and we also offer it to show the various—

The Court: On what basis do you offer it for the truth of the facts stated therein? There is no foundation or base of any kind to find out how this was made up or where it came from.

Mr. Greenberg: I will ask further questions about it.

By Mr. Greenberg:

Q. Do you know how this document was compiled?

A. Well, I can best describe it as being a crash compilation to determine the amounts of steel consumed by the various products that go into cans. It was compiled by interrogating in different fashion the members of the Can manufacturers industry.

Q. What was the purpose of compilation of this document?

[fol. 1680] A. This, Mr. Greenberg, was during the defense period and we were trying to determine just—the Government didn't know just how much each product took, and we were called into a meeting and told to cut out tennis balls in cans because it was told it would save the nation. This would be a guide to show what went into cans and in what amount.

Mr. Greenberg: All right, your Honor, the Government offers G-136.

Mr. Hughes: I object to it on the ground that no proper foundation has been laid.

The Court: You may examine.

Preliminary Cross-examination.

By Mr. Hughes:

Q. Mr. White, did you personally have anything to do with the preparation of this document?

A. No, sir.

Q. Who prepared the document?

A. This was done by Dr. Miller McClintock and his staff.

Q. In other words, he took time out from these other duties that you have described to get this document up; is that right?

A. Dr. Miller McClintock's organization, sir, switched over. As the economy and the threat to the nation, and as [fol. 1681] we went into the defense period, his staff was devoted to trying to get figures which would be helpful to the Government in the prosecuting of the war.

Q. And you say it was a crash program; is that how you described it?

A. I described it that way, yes, sir.

Q. And isn't it a fact that this document, consisting of 120-odd pages, was gotten up in the space of about a week's time?

A. At this late period I couldn't tell. A very short time. We have never—there were only about three copies, and we have never offered the figures anywhere for other purposes.

By the Court:

Q. What was done with the document?

A. It was used by the governmental agencies, your Honor, to try and show them the distribution of steel and tin and the consumption of steel and tin. We were then being—it was our view that, for example, beer was non-essential and should not be permitted in cans, and other products of that nature. This was an attempt to break down our industry, the first attempt ever made.

[fol. 1682] Q. What was this in the nature of a brief, would you say?

A. Well, it is in the nature of a statistical, hurriedly gotten together statistical compilation, which is, I am afraid, not too dependable.

By Mr. Greenberg:

Q. Did you use this, sir—

Mr. Hughes: Well, now—

The Court: No, Mr. Hughes is examining.

Mr. Greenberg: I thought he had finished.

By Mr. Hughes:

Q. And do I understand you have never considered this document to be a reliable compilation of statistics?

A. I just said to his Honor I was afraid it was not too dependable.

Q. And did the Can Manufacturers Institute ever do anything like this before this document?

A. No, sir.

Q. And has it ever done anything like it since?

A. No, sir.

Q. Does the Can Manufacturers Institute, as part of its activities, collect and collate statistics as an ordinary practice?

A. No, sir; not of this nature.

[fol. 1683] Q. You don't keep any such statistics as this?

A. The only figures we collect are those that are collected by the Government, plus a wage rate survey.

Q. But you don't attempt to get figures from your members or from the industry generally; is that correct?

A. Not of this nature.

Mr. Hughes: No.

By the Court:

Q. I take it from what you say, Mr. White, you don't know really how Dr. McClintock went about assembling this data, do you?

A. No, except that it was in a very offhand manner. We tried to get as rapidly as possible—

Q. Some rough figures?

A. That's right.

Mr. Hughes: I press the objection, your Honor.

By Mr. Greenberg:

Q. Sir, would you say that the figures that were received were estimates of what was being packed in these various end use categories, or what were being produced in these various end use categories?

[fol. 1684] A. In part I would say they would be very definitely estimates.

Q. You say "In part"; what do you mean?

A. You see, in certain things you pack, Mr. Greenberg—we have some 2500 different items that go into cans, and so this is not known, the amount that is consumed.

Q. In other words, this study was the best estimate at that time; is that correct?

A. That is correct.

Mr. Hughes: And the best was none too good; is that right?

The Witness: That's right, too.

Mr. Greenberg: At any rate, your Honor, we offer G-136 into evidence.

Mr. Hughes: I press the objection, your Honor.

Mr. Greenberg: As the best effort possible at the time.

The Court: Oh, no such evidence, no such indication.

Mr. Greenberg: As an estimate, your Honor.

The Court: I will exclude it.

Mr. Greenberg: May I ask further questions, your Honor?
[fol. 1685] The Court: Yes.

By Mr. Greenberg:

Q. Sir, at that time did Dr. McClintock compile any underlying data for this report?

A. I don't think I quite understand what—this was the complete report, as far as I have any recollection of it, being just a set of figures hastily gathered.

Q. You say "hastily gathered," sir; will you tell us precisely how he gathered these statistics?

A. He gathered some by questionnaire, some by telephone, some by telegram. This, as I have said, is a crash program to try and get before the Government as soon as possible. So any means of getting this information was used, and all means.

Q. Now, after this was compiled, you say you wanted to present it to the Government; was it so presented?

A. Pardon me.

Q. Was it so presented to the Government?

A. It was used with the Government agencies. Whether presented in that form, I cannot tell you. The facts that we gained in there are the estimates, or the estimates we gained [fol. 1686] were used with the Government agencies.

Q. What Government agencies are you referring to?

A. Well, Mr. Greenberg, you remember that alphabetical thing. Whether it was the WPB at that time or just what, it was the defense agencies that were concerned.

By the Court:

Q. Were these the agencies, Mr. White, that were engaged, among other things, in the allocation of raw materials?

A. Correct, sir.

Q. And basic materials of one kind or another?

A. Correct, sir.

Q. The War Production Board and the various agencies that operated in affiliation with them?

A. Yes, your Honor.

By Mr. Greenberg:

Q. And, sir, based on the presentation of this study, did these agencies make certain decisions?

Mr. Hughes: I object to the form of that question.

The Court: Sustained. The witness testified that as far as he knew it had never been presented to any agency.

[fol. 1687] Q. Had the information contained in the study been presented to any agencies, sir?

A. I said the facts taken—

The Court: No, I won't permit that question. First of all, let's find out whether the study was presented to any agency.

Q. Was the study presented to any agency, as far as you know?

A. No, sir.

Q. Were the facts contained—

Mr. Hughes: Well, now, I object to the form of that question, as to the facts. If anything is clear it is—

By the Court:

Q. Was the material in this document—

A. The material, your Honor, was used and was presented, was used with different defense agencies.

Q. How much of the material, do you know?

A. I do not, sir.

Q. In other words, some of the material was referred to and some of it was not, as far as you know?

A. Correct, sir.

Q. You don't know which material was referred to and [fol. 1688] which material wasn't; is that right?

A. Correct, sir.

By Mr. Greenberg:

Q. Sir, I direct your attention to the table of contents of this document, and with specific reference to the section on food and beverage containers.

The Court: What page are you referring to? The pages aren't numbered, are they?

Mr. Greenberg: Yes, they are, lower lefthand corner. That particular sections begins at page 7.

Mr. Hughes: Are you referring to the index now, or are you referring—

Mr. Greenberg: I am not referring to the index. I am referring to the table of contents.

Mr. Hughes: Table of contents, yes.

Q. Can you recall whether any part of this section was used with these Government agencies?

A. No, sir.

Q. You don't.

Sir, do you have any documents in your files which would indicate what use was made of this study?

A. No, sir.

Q. Have there ever been such documents in your file? [fol. 1689] A. Not to my knowledge, Mr. Greenberg. This

was the time when you were dealing with the various agencies, and you presented whatever they seemed to need at the time for their education.

Q. Do you know who presented this material to the various agencies?

A. No.

Q. But you do know it was presented; is that correct?

A. That is correct; it was used, those estimated facts were used.

Q. Now, sir, the study really has a number of parts. Here is a listing of the products, as you can see, food and beverage containers listing of the products; in the lefthand corner, 1940 steel tonnage, and the righthand—

Mr. Hughes: Where are you reading from?

The Court: What are you referring to?

Mr. Greenberg: Any one of the pages, your Honor, of the study. I will refer to page 10, if he wishes.

The Court: Wait a minute, let's find that.

All right, sir, I have page 10. What do you want to ask about?

[fol. 1690] Q. Sir, how were the products, the various products, baked beans, green beans, et cetera, how were these determined for this study?

Mr. Hughes: I object. I don't understand the question.

The Court: I will allow it.

A. Mr. Greenberg, the whole intent, as I tried to point out, of this was to break down our entire industry for the 2500 products that go into there, to show the Government the steel and tin—tin came from outside the country; steel was in short supply, and we were trying to supply them with as much information as possible so that they could be guided by it.

Mr. Greenberg: Your Honor, the Government respectfully suggests that whether these were estimates or some other form of indication of how much tonnage was passed, that might very well go to the weight. But the witness has indicated that the material contained in this document was presented to Government agencies and was made by Dr. Miller McClintock, who was employed by the Research Division at that time.

The Court: Well, Mr. Greenberg, you offered this for the truth of the facts contained therein. I am not going to take it for any such purpose, sir. There is no indication that the [fol. 1691] facts are true and correct.

Mr. Greenberg: Your Honor, then we will offer the document for the purpose of showing the types of areas or types of markets that these can manufacturers operated in at that time.

Mr. Hughes: Well, now your Honor, that is just another guise of offering it for the truth of what it purports to assert, and I object to it for any such purpose, and I object to it on the ground that it hasn't been properly proved; that it is remote in time; that the circumstances of its production make it clear that it is not a reliable document, or trustworthy in the evidentiary sense, and that it is wholly inadmissible.

Mr. Greenberg: I would like to ask just a few more questions, your Honor, with respect to Dr. Miller McClintock.

The Court: All right.

By Mr. Greenberg:

Q. Sir, do you know what Dr. Miller McClintock's experience had been prior to his employment by the Association?

A. Prior to his taking on our job?

Q. That's right.

[fol. 1692] A. I don't believe I do, Mr. Greenberg.

He was recommended by one Archie Morse, who has since passed on, who was then with American Can Company. I don't recall what—I know that when he left us, I think he headed up the Mutual Broadcasting Company for a short time.

Q. And do you know what he did after that?

A. This you have got to verify. I think it was something out in Chicago, in connection with the Britannica Encyclopedia, or something like that.

Q. Now, he had a staff of assistants; is that correct?

A. That is correct.

Q. Can you describe these people for us?

A. Well, they were about varying in number, and used outside agencies, the psychological corporation was referred to. I can't describe them as being other than people

working for them, presumably he thought competent to do their job.

Q. Right. And how much was the budget, if you can recall? What was the budget for Dr. McClintock's Research Division?

Mr. Hughes: Your Honor, I object to this as all irrelevant and immaterial.

[fol. 1693] The Court: Are these questions directed at the admissibility of 136?

Mr. Greenberg: Yes, your Honor. They were compiled by Dr. Miller McClintock.

The Court: I understand that. I just asked you a question.

Mr. Greenberg: Yes.

The Court: I will overrule the objection.

By Mr. Greenberg:

Q. Sir, can you recall what Dr. Miller McClintock's budget was for studies of this type, and others as well?

Mr. Hughes: Now, I object to that.

The Court: I sustain the objection to that.

Q. Do you know what Dr. Miller McClintock's budget was in 1941, sir?

A. No.

Mr. Hughes: Your Honor, I think that question is obscure. Is he asking—

The Court: He said he didn't know.

Mr. Hughes: Oh, I see.

Q. Sir, was this document referred to in any other publication of the Can Institute?

A. We are still talking about this same—

Q. The same study.

[fol. 1694] A. In any other publication of the Can Institute?

Q. That is correct.

A. Not to my knowledge, no.

Q. Didn't you have a book which summarized the activities of the Can Manufacturers Institute over the years?

A. Dr. Miller McClintock's book, which summarized his

activities, but I don't think this was referred to, because his activities were split. This was defense activity; the other was promotional activity.

Q. In other words, this was not a promotional document; is that correct?

A. That is correct.

Q. And it had nothing to do with the advertising program of the Institute; is that correct?

A. That's right.

Q. And the motive or the desire of Dr. McClintock and the Association was to represent to the Government an accurate set of figures; is that correct?

Mr. Hughes: I object to that, your Honor.

The Court: Yes, I will sustain the objection.

Mr. Greenberg: May I have just a moment, your Honor? [fol. 1695] Your Honor, the Government again offers G-136 and respectfully suggests that this was a document which the Institute had no motive to misrepresent. It is not a consumer's survey; it is not advertising.

The Court: Nobody is questioning the desire or any indication that the Institute had any desire to misrepresent. The only question that is being raised here is are these figures in any way accurate? How were they gotten together?

Mr. Greenberg: Your Honor, I think the witness testified that Dr. McClintock had inquired of the various manufacturers, Can Institute manufacturers, as to what their tonnage was in base boxes in various areas; then he converted them. We think it was the best estimate of the Association at that time, and they must have thought so, because they presented material from the study to Government agencies, Government agencies who were concerned with the very serious matter of aligning tinplate for various end uses; and as I understand it, a good part of the activities of Mr. White and other manufacturers in this industry, including Continental Can, was directed to the question of just how much tinplate they were going to get for each of these end [fol. 1696] uses.

And there is a reference to a M-81 order on page 8-A of the exhibit, a War Production Board Order M-81.

The Court: If this was a War Production Board order,

certainly a War Production Board order might have some relevance and you might get it in.

Mr. Greenberg: Your Honor, at that time there was a great deal of excitement and concern by the can manufacturers as to what this War Production Board order would bring about with respect to tinplate consumption by these various companies, or tinplate production. I am quite certain that if the Can Manufacturers Institute used this material with Government agencies, they knew that this information was reliable.

Mr. Hughes: Well, your Honor, the testimony is precisely to the contrary, that it was gotten up in haste; that it was a crash program; that Mr. White does not consider it to be reliable. The extent to which it was used with any governmental agency is certainly obscure to say the least, and the method of gathering the data was so hasty and such a hodgepodge that it couldn't possibly have any trustworthi- [fol. 1697] ness as a document to be taken for the truth of anything that is contained in it, and I press the objection.

The Court: I will sustain the objection.

Mr. Greenberg: Your Honor, we merely wanted to say that although we do not necessarily agree with what Mr. Hughes said to the Court at this moment, that his statement, or whatever victories he got, or whatever testimony he derived from the witness, merely goes to the weight of the document and not to its admissibility.

At any rate, we offer to prove, and we now make a formal offer of proof with respect to this document, that we believe this document is relevant and material to this action; that it is the best estimate under the existing conditions at that time by this trade association; that they used the information with Government agencies. It may not serve the same weight as an admission out of the files of the defendants, but we do believe it deserves some weight.

The Court: It is no admission of anything.

Mr. Greenberg: No, I didn't mean to state that this was an admission. I was merely trying to say it may not deserve the same weight as an admission out of the files of the defendant, but we believe it certainly has some materiality and [fol. 1698] relevance to this lawsuit, and we so offer it.

The Court: I will sustain the objection.

Next document.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 137 for identification, and ask you if you can identify it?

A. Yes, sir.

Mr. Hughes: Could you bear with us a minute, Mr. Greenberg?

All right.

A. Well, this—

Mr. Greenberg: Just a minute. They are still looking around for their documents.

Mr. Hughes: We have it.

Q. All right. Will you identify that document for us, sir?

A. Yes, that is a defense memorandum prepared by the Research Division.

Q. Now, you say "defense memorandum"; what use was made of this document?

A. That I don't know. I have not looked through it. It would appear to have—to be for the same purpose as I have [fol. 1699] been trying to state before, to show the amount of tin and steel consumed.

Q. So in other words, sir, is this true:

Do you mean that Dr. McClintock, in this period of time, not only compiled the documents G-136, his functional classification, but G-137, for presentation; is that correct?

A. Figures were gathered by Dr. McClintock during this defense period, relative to—I notice this happens to be on beer—relative to various products, to show how much steel and tin was consumed by those products.

Q. Now, you say the "defense period of time"; in what period of time did Dr. Miller McClintock compile these various studies?

A. Dr. Miller McClintock, my recollection is, joined the Institute in '41, and I think he bowed out the end of '42.

Q. But at any rate, during this period of time he was concerned with presentation of data with respect to utilization of tinplate?

A. Part time, Mr. Greenberg. The first part he was hired, his first job was to determine by research and survey

whether or not further money should be spent in the promotion of cans as such. Then when we got into the war, then [fol. 1700] his efforts were turned toward getting together figures on various products.

By the Court:

Q. Let me ask you this:

Did Dr. McClintock himself have any dealings, as far as you know, with the War Production Board or comparable agencies?

A. No, sir.

Q. Who did that on behalf of the Institute?

A. Members of the Institute themselves, and I did some of it.

Q. And, sir, was reference made to Government's Exhibit 136 and Government's Exhibit 137 when such negotiations or representations were made to Government boards?

A. No, no, not to my knowledge, not to my recollection. These—

Q. I didn't say—was the document, was this used as a source of information?

A. Mr. Greenberg, the figures were gathered together to inform the Government, also to let us know, who were dealing with the Government, as much knowledge as we could have.

Mr. Greenberg: Your Honor, the Government offers G-137 [fol. 1701] in evidence and G-136 once again into evidence on the ground that the witness has now testified that this was a program which encompassed some period of time, a program to compile information and data for presentation to Government agencies.

The Court: There is no evidence of presentation to Government agencies, Mr. Greenberg.

Mr. Hughes: Nor is there any testimony from the witness which changes his testimony that 136 was gotten up hastily. There is testimony that other things were done, but the document itself was a hasty job, and there has been no alteration of that testimony.

By the Court:

Q. Have you any idea how long it took to prepare 137, Mr. White?

A. No, sir; no, your Honor. We were under pressure on all of these things at that time.

Q. Do you know what was done with this actual memorandum?

A. No, sir.

Mr. Hughes: Your Honor, this was about one week after Pearl Harbor, as a matter of interest.

Mr. Greenberg: I could understand, your Honor, why Continental Can, American Can and all the other members [fol. 1702] of the Institute might be concerned about not being able to get tinplate under the circumstances, among other things, and I don't wish to reiterate, but we do say that this was not random job. This was done for a specific purpose, and it was done by a man retained by this organization who, as far as we could see from the documents, the formality of the documents, the instructions in the document, that they were done to gain the best possible estimates of the situation at that time, and that refers to both G-136 and G-137.

Mr. Hughes: Same objection to this document as to the other.

The Court: If you are offering either one of these for the truth of any of the facts contained therein, I don't see that you have established that they are any reliable indicia of anything.

Mr. Greenberg: Then, your Honor, we still offer it for that purpose, and we will offer it for the additional purpose to show that the Can Institute was concerned with tinplate shortage in raw material, and when tied in with other documents it will show that this necessitated investigations into possible use of glass containers by processors as a substitute [fol. 1703] and fits into the background and the network.

Mr. Hughes: Well, now, your Honor, I object to it for any such purpose. What is the relevance of the fact that the can manufacturers were interested in allocations?

The Court: There is no doubt about that anyway.

Mr. Hughes: There is no doubt about it. But what possible relevance does it have?

Mr. Greenberg: Well, I think it is very relevant, your Honor.

Mr. Hughes: Well, your Honor, it shows—your Honor, we will stipulate that the can manufacturers in the United States were interested in the subject of allocations of metal.

The Court: And very vitally interested.

Mr. Hughes: Yes. Now, if that is all he wants, we will stipulate to that fact.

Mr. Greenberg: That isn't the only point, your Honor.

Mr. Hughes: That is what you said it was.

Mr. Greenberg: Just a moment, Mr. Hughes. We still think it fits into the background, which shows not only were they concerned with shortage of tinplate, but the use of [fol. 1704] substitutes which did not rely on the same raw materials, such as tinplate which were imported from foreign nations.

Mr. Hughes: I object to anything offered for background.

The Court: I will sustain the objection.

Mr. Greenberg: The Government, of course, additionally has offered these documents for the truth of the facts contained therein.

The Court: Well, yes.

By Mr. Greenberg:

Q. Mr. White, I show you Government's Exhibit 138 and ask you if you can identify it.

Mr. Hughes: Just one moment, please.

A. This was a consumer's survey prepared by the advertising agency, Benton & Bowles.

Q. Who was Benton & Bowles? At that time were they retained by your Association?

A. After Miller McClintock's time, the Institute hired a man by the name of Gordon Cole as advertising director and retained the services of Benton & Bowles as an advertising agency.

Q. What was their function to be and what was it after they were employed?

[fol. 1705] A. Promotion preparation of advertisements

and the promotion of cans in whatever manner they were able to convince the advertising director, and he convinced the committee it made sense.

Q. Right. And Government's Exhibit 138 is a survey conducted by Benton & Bowles for the Institute; is that correct?

A. For the Advertising Division—that's right; for the Institute.

Mr. Greenberg: Your Honor, the Government does not offer this document in for the truth of the facts stated therein. The document is a survey of consumer opinion, as to what mothers or fathers or sons or farmers, or what have you, prefer. We offer it to show an awareness of competition from other types of containers, namely and primarily glass containers.

The Court: What do you say, Mr. Hughes? Do you want to examine about it?

Mr. Hughes: No, your Honor, but I am prepared to stipulate—I am not stipulating really that it has any relevance or materiality, but I am prepared to stipulate that the Can Manufacturers Institute caused Benton & Bowles to make the survey.

The Court: And it was prepared and delivered to them [fol. 1706] by Benton & Bowles, and it was before them.

Mr. Hughes: Yes.

By the Court:

Q. Do you know what the circulation of this was?

A. No, sir; but usually, I would say that it did not go beyond the committee.

Q. It went to the committee of the Institute?

A. Correct, sir.

The Court: I will take it.

Mr. Hughes: Well, your Honor, as I understand it, it isn't even offered.

The Court: Well, yes, it is.

Mr. Greenberg: Well, if it is unclear to Mr. Hughes, I now offer that document.

Mr. Hughes: I understood him to say that he was not offering it.

Mr. Greenberg: No, I limited the offer, Mr. Hughes.

Mr. Hughes: Well, your Honor, I do object to it, because in view of the stipulation it is totally unnecessary to have this document in evidence. The whole purpose of the stipulation was to eliminate cluttering the record with a several [fol. 1707] hundred page document, the only purpose of which is to prove what we concede, that they had a survey.

The Court: Well, no, I will overrule the objection and take it for the limited purpose of showing that this was a survey presented to the Institute, and went before its administrative committee.

Mr. Hughes: Your Honor, may I be relieved of the stipulation then to ask a few questions?

The Court: Yes; you may be relieved of the stipulation. However, if you wish I will reserve ruling until you have examined, if you wish to examine, Mr. Hughes.

Mr. Hughes: Well, the questions that I was going to ask I am prepared to ask now.

The Court: All right.

By Mr. Hughes:

Q. Mr. White, the Institute itself had nothing whatever to do with the devising or execution of this survey, is that correct?

A. It was prepared by Benton & Bowles, Mr. Hughes.

Q. It was done by Benton & Bowles.

A. That is correct.

[fol. 1708] Q. And the only thing that you received from Benton & Bowles was the survey itself; that is, this document 138, is that correct?

A. Yes, they prepared this. This is a part of their Madison Avenue technique.

Q. You did not have given to you any of the data from which the survey, the written result of the survey, which is Exhibit 138, was prepared; is that correct?

Mr. Greenberg: Your Honor, I am going to object to the use of the term "you," unless it is defined. Does he mean the committee of the Association who supervised these activities, or does he mean the witness personally, in his question?

The Court: Let's find out what Mr. Hughes actually means.

Q. Mr. White, did the Association receive from Benton & Bowles any of the underlying data from which they compiled this exhibit?

A. Not to my knowledge, Mr. Hughes.

Q. Did you personally receive any such data?

A. Did what?

Q. Did you personally receive any such data from them?
[fol. 1709] A. No, sir.

Mr. Hughes: All right, I object to it on the ground that it is not properly proved.

Mr. Greenberg: I would just like to ask one or two questions, your Honor. There is an ambiguity, I think, on the record.

By Mr. Greenberg:

Q. Sir, Benton & Bowles, while they were employed by you, were supervised by some committee in the Association, were they?

A. As I stated before, Mr. Greenberg, we hired an advertising director, Gordon Cole, who had had great experience along that line. He in turn reported to an advertising committee. They in turn reported to the board.

Q. So in other words, Benton & Bowles weren't off on their own, practically; they were one of these—

A. Benton & Bowles took over for the most part and prepared these things.

Q. But they reported to Mr. Cole, who reported to the advertising committee.

A. That's right.

The Court: All right, the objection is overruled. The document, which is 138, is admitted for the limited purpose indicated.
[fol. 1710]

(Government's Exhibit 138 received in evidence.)

Mr. Greenberg: Your Honor, we have an exhibit, which is entitled G-135. Now, this is an exhibit which, very, very briefly, outlines some of the more or some of the well known facts.

The Court: Let's find out about it.

Is there any objection to this Exhibit 135?

Mr. Hughes: Your Honor, may I inquire the purpose for which this is being offered?

The Court: Yes, you may.

What is the purpose of it?

Mr. Greenberg: Your Honor, as you can see from the title, these are notes for advanced technical students.

The Court: You consider me an advanced technical student?

Mr. Greenberg: I most certainly do. I have been impressed by the knowledge you have acquired during this lawsuit.

It may be we don't need this document at this time. We marked it some months ago and turned it over to the defendants on the theory that we might offer it to you for [fol. 1711] background. It may very well be that it is not necessary at this point.

Mr. Hughes: Your Honor, I object to it as background.

Mr. Greenberg: There are references to various books in the back and reference to periodicals that you can read, for example page 4.

The Court: I am frank to say I don't see what purpose it serves at this point, Mr. Greenberg. I have heard a lot of testimony about it from the various technical people in the industry, and I am not concerned with the bibliography, particularly.

Mr. Greenberg: As I stated, your Honor, we marked this some time ago before we ever had testimony, and as I looked at this last night, I frankly said probably I shouldn't offer it.

The Court: It seems to me it is surplusage. I will sustain the objection.

Mr. Greenberg: I haven't offered it.

The Court: All right.

Mr. Greenberg: With that, your Honor, we have no further documents.

The Court: Anything further from Mr. White?

You may step down.

[fol. 1712] Mr. Hughes: Excuse me.

The Court: I am sorry.

Mr. Hughes: I had some questions. I didn't realize. I thought he was just finished on the documents.

The Court: All right.

Cross-examination.

By Mr. Hughes:

Q. Well, now, Mr. White, just to go back, the first of these groups having to do with promotion was called what? What was the first of these promotional groups that the Can Manufacturers Institute set up?

A. Research Division, sir.

Q. The Research Division?

A. That is correct.

Q. And that was the division in charge of this Dr. McClintock; is that correct?

A. That is correct.

Q. And do I understand that you really had nothing whatever to do with the activities of that group?

A. That is correct.

Q. They didn't report to you and you didn't report to them?

A. That is correct.

[fol. 1713] Q. It was his job to report to the members of the Institute, who were members of the committee; is that correct?

A. Right.

Q. And do you have sufficient knowledge to know whether one of the functions of Mr. McClintock was to make a study to determine whether it was worth while to have a promotional program at all?

A. I think, Mr. Hughes, that I stated that the initial idea was that the tinplate manufacturers were approached to put up money. They said that they would want to make a study and to spend certain moneys to determine that further expenditures would be worth while in the promotion of our cans and their tinplate. This was the initial purpose for which Dr. McClintock was hired.

Q. And he made a study to determine whether it would appear to be worth while to have a promotional program; is that right?

A. That is correct.

Q. And that was his first job?

A. That is correct.

Q. And the can manufacturers were endeavoring to interest the tinplate manufacturers in putting up the money; [fol. 1714] is that right?

A. That is correct.

Q. And did there come a time when Dr. McClintock did report that he thought that a program of promotion was desirable?

A. That is correct. That was in his final report.

Q. And could you tell us what happened? Was that followed by a promotion program?

A. That was followed by the advertising program, during which period Benton & Bowles were hired.

Q. Well, then, the sequence of it was that McClintock makes his report and recommendation, then the matter becomes quiescent during the wartime; is that it?

A. Well, Mr. Hughes, Dr. McClintock's organization in the latter days was used in the gathering of statistics which would be helpful to committees and to me in Washington to present to the Government. Nevertheless, based on his findings in the first part of his tenure, we did proceed to advertise and we did proceed to hire Benton & Bowles to carry on that advertising in that promotional work, the study of vitamin content in foods, and so forth.

[fol. 1715] Q. These things you have already told me about.

A. Correct.

Q. And about when did that program start?

A. Well, McClintock, I think, bowed out the latter part of '42, if I am correct, and was immediately or almost immediately followed by the advertising program, and that went on, I think, about five years. I would have to check that.

Q. And then, can you describe for us generally the nature of that advertising program, what media and so forth were used?

A. Well, I can't tell you the exact media, but my recollection was that it was Life, Saturday Evening Post—the usual ones, some medical magazines, pointing out this was

after a study had been made to determine vitamin content of canned foods, and the general run of advertising agency media which they thought were best.

By the Court:

Q. For example, you mean to tell us that the advertising program was directed at establishing that the vitamin content of canned foods was good or better than any other kind of food; is that right?

A. Not quite, your Honor. That was a part of it. We [fol. 1716] did conduct or had this study conducted to determine the vitamin content of canned foods. The ads themselves were directed at saying, "Look what a wonderful thing is the can," and nobody was very impressed.

By Mr. Hughes:

Q. And, Mr. White, about how long did this program continue?

A. About five years, or until the tinplate people began to get tired.

Q. And when they ceased, when they ceased to contribute towards it, the program was dropped; is that correct?

A. In the early, the early part of it, it was completely tinplate money. Later on it was shared with the can manufacturers.

Q. Now, before we leave the subject, are you generally familiar with the advertisements as they appeared? Did you see them from time to time as they appeared and before they appeared?

A. Oh, yes, I saw copies of them. I have only a vague recollection of what they said.

Q. And do you know and can you say that these ads did not run down glass containers?

[fol. 1717] A. I cannot remember any single ad that was ever aimed at glass. That would not make sense to us.

Q. And do you know and can you say that the burden of the advertising was to build up the can as a container, per se?

A. That's right; various types of can, general line and food.

Q. Now, following this program, what was the next promotional effort, if I may put it that way?

A. When the tinplate people withdrew their support, the Can Manufacturers Institute moved into what they called a marketing operation. This was on a substantially smaller budget, and was aimed at aiding in promotional fashion the packer of any product who was willing to help himself. This got away from the tomato boys and the bigger ones insisting they ought to get any support.

Q. And about how long did that program last?

A. That went on, Mr. Hughes, until 1957.

[fol. 1718] Q. And was that discontinued then?

A. That was discontinued then.

Q. And presently you aren't doing any advertising or promotional activities, are you?

A. We are not doing any advertising. We have a public relations outfit that is devoting its time since they have been retained to advancing all over the world the sesquicentennial of the tin can.

Q. And is that the only promotion you are doing presently?

A. That is correct.

The Court: When is the sesquicentennial?

The Witness: This is the same year, and I don't know whether it would be proper to give you a lighter with a seal on it. Nicolas Appert was followed by an Englishman by the name of Peter Durant 150 years ago. Nicolas Appert, as you probably know, did his first canning in the glass bottles and that was quickly followed by Peter Durant who got a patent and made cans.

The Court: All right, sir.

Mr. Hughes: No further questions, your Honor.

Mr. Greenberg: Your Honor, I have just a few questions.

[fol. 1719] Redirect examination.

By Mr. Greenberg:

Q. Since we have gone beyond the documents to some extent, do you recall the Can Manufacturers Institute co-operating with tinplate manufacturers in the promotion of soft drink cans?

A. Wait a minute now. Can Manufacturers cooperating with—

Q. Tinplate suppliers.

A. Yes.

Q. For the promotion of soft drink cans?

A. Promotion of what?

Q. Soft drink cans.

A. Soft drink cans?

Q. Yes.

A. Tinplate suppliers, no, no.

Q. Doesn't your Association send out or distribute—

A. Wait a minute. This is cooperation. I am talking about—when we were talking about the tinplate suppliers putting up money, the tinplate suppliers today are advertising soft drinks in cans, but that is their separate program.

Q. Don't you distribute their advertisements?

[fol. 1720] A. We ask for them; we sure do.

Q. And you distribute them, do you not?

A. We distribute them to our members to show what cooperation we are getting.

Q. Do you recall when you had ads promoting baby foods in cans?

A. We had what?

Q. Do you recall, sir, when your Association had ads promoting baby foods in cans?

A. This is the Benton & Bowles period you are speaking of?

Q. All right, we will start off with that period.

A. We promoted—I don't know whether we promoted baby foods—we promoted everything in that period.

Q. Didn't you advertise in institutional papers and trade journals—

A. I have so testified.

Q. I am talking about trade journals as contrasted with Life Magazine and the Saturday Evening Post.

A. That's right, medical journals and the whole gamut.

Q. Sir, do you recall when the Can Institute advertised [fol. 1721] an instant coffee can?

A. Advertised what?

Q. An instant coffee can.

A. No, I do not.

Q. You do not recall that?

A. No.

Q. In other words, you are not too sure about what the contents of your advertising has been, is that correct?

Mr. Hughes: I will object to that.

The Court: I will sustain the objection.

Mr. Greenberg: No further questions.

Mr. Hughes: Nothing further.

The Court: Thank you, Mr. White, you may step down.

(Witness excused.)

Mr. McManus: Mr. Neuhart, please.

J. C. NEUHART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, the Government is going to refer to 777, 778 and 779 with this witness.

Direct examination.

By Mr. McManus:

Q. Mr. Neuhart, by whom are you presently employed?
[fol. 1722] A. I am retired.

Q. What was your former employment and with what company?

A. The Continental Can Company Glass Division.

Q. And when did you retire?

A. Last November 1st.

Q. For how long were you with the—you say you were with Hazel-Atlas?

A. Hazel-Atlas.

Q. For how long a period have you been associated with the Hazel-Atlas Division of Continental Can or Hazel-Atlas Glass Company?

A. 43 years.

Q. During the period 1950 to 1956 what was your capacity with Hazel-Atlas?

A. Well, I was vice-president of the sales division at the time that Continental Can came into being, and prior to that I was a sales manager for different products, principally food container products and others.

Q. And in what period in that 1950 to 1956 period would you be associated with food products?

A. The entire period.

[fol. 1723] Q. Would you be associated with other products also?

A. Yes. The company's sales were divided into what we termed resale ware, that is, cups, saucers, tumblers, and so forth, cosmetics, fruit jars, and well, beer bottles, whiskey bottles and so forth. The latter two was a minor part of the business and I took that under my wing at the time.

Q. Do you know a Mr. C. F. Haberstick?

A. Yes, I do.

Q. Do you know what his position was with the company in 1953?

A. He was the Chicago sales manager.

Q. Do you know Mr. Ralph E. Dyer?

A. Yes.

Q. What was his position?

A. He was the Cincinnati sales representative.

Q. He was what?

A. Cincinnati sales representative.

Q. And have you known those gentlemen for a long period of time?

A. Yes, many, many years.

Q. I would like to show you Government's Exhibit 777. Do you recognize that document?

[fol. 1724] A. I don't remember it but it evidently crossed my desk at that time. I recognize that signature.

Q. Do you recognize Mr. Haberstick's signature?

A. Yes, I do.

Q. And who was Mr. Algee?

A. He was the general sales manager, I believe, at that time.

Q. Now going to document 778, do you recognize that signature?

A. Yes.

Q. And that is the signature of whom?

A. Carl Haberstick.

Q. This was addressed to you, of course?

A. That evidently passed over my desk.

Q. And 779, do you recognize that document?

A. Well, yes, that is the signature—it looks like Ed Porter's. I recognize that as his signature.

Q. And he would be signing for Mr. Dyer?

A. That is correct. This would be signed Ralph E. Dyer.

as the representative and this would indicate Mr. Porter indicated that.

Q. What was Mr. Porter's position?

A. He was a salesman working with Mr. Dyer, Mr. Dyer [fol. 1725] being the head of the office.

Q. This is 778. Do you recall that communication?

A. No, I don't recall it.

Q. Would this be a normal type of communication to you?

A. Yes. That would be a salesman's routine call and what he did or heard or had seen.

The Court: In the normal way of a salesman reporting, is that correct?

The Witness: That is correct, reporting what he heard or what he had seen in his routine.

The Court: What is the purpose now?

Mr. McManus: We have a very limited purpose for those three documents and for the next two also, and that is, during this period of time—

The Court: "This period of time" meaning what?

Mr. McManus: During the period of 1953, that it appears that Hazel-Atlas Glass Company was keeping abreast of the price of glass containers for the beer industry.

The Court: Is there any objection to that? Is there any reason to suppose that they were not keeping abreast?

[fol. 1726] Mr. Johnson: Well, your Honor—

The Court: Do these documents establish that?

Mr. Johnson: We really do not know what is meant by "keeping abreast." Here we have one, two or three documents—

The Court: All right, if you want to know what he means by "keeping abreast," you may examine about these documents.

Mr. McManus: Your Honor, could I just say this: documents 782 and 783 are for the same purpose but on different products, and I would like if we could have Mr. Neuhart identify those first?

The Court: All right, let him identify them.

Mr. McManus: And that would be for the same purpose.

Q. Do you recognize 782?

A. Yes, I do.

Q. You would have written that letter?

A. Yes.

Q. You would have written that document?

A. Yes.

Q. Do you recognize the attachment?

A. That would be the list referred to in the letter, yes.

[fol. 1727] Q. Can you identify 783?

A. Yes, that is a document that I had written.

Mr. McMannus: The purpose, your Honor, of 782 and 783—

Q. Well, Mr. Neuhart, what was your position again?

A. What was that?

Q. In 1954 what was your position, in March, 1954?

A. I would be working, as I stated, for Mr. John Algeo as a sales manager for those products.

Q. And you would be informing all of your agents of the prices at which you were selling baby food jars as shown on 782?

A. Yes.

Q. And in 783 keeping them advised of prices advantages—

A. Price advance.

Q. —advance, I am sorry, of soluble coffee?

A. That is correct.

Mr. McMannus: That is the purpose of the offer of the documents, your Honor.

The Court: Do you wish to examine about these documents?

[fol. 1728] Mr. Johnson: We have some questions on them.

The Court: If you have a question, go ahead.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Did you say, Mr. Neuhart, that in 1953 your job was food container sales?

A. Principally, that was our main business, food containers. I also looked after beer bottles and liquor bottles and those items also.

The Court: You were selling beer bottles at the time, were you?

The Witness: Well, not in great quantity.

The Court: You were selling some?

The Witness: I wouldn't know offhand whether we were actually at that particular moment selling some, but it was a very small amount.

Q. How about baby food jars, at that time were you selling many baby food jars?

A. At that time we sold some, but a small quantity of the total of the industry.

Mr. McManus: Your Honor, could we have a definition of what "some" is?

[fol. 1729] The Witness: Yes, I will put it this way: that when we spoke of beer bottles, I doubt whether we sold a percentage, 1 per cent of the total beer bottles sold in the industry. We were not beer bottle manufacturers. We did not have the facilities—

Mr. McManus: Now, your Honor, this is pretty far away from the documents—

The Court: No, I will allow it.

The Witness: (Continuing) We did not have the facilities for, say, beer bottles, but we may have sold some. We might get an order and ship some. We had a limited amount of production because beer bottles, I believe, at that time were principally made of what is termed amber glass or the dark glass. I think you understand the difference there.

The Court: Yes.

The Witness: Flint glass for beer was not used in great quantities. Our amber production used to fluctuate from one small tank or possibly two tanks of production, which was very limited. So that is the reason we were not a factor in the beer bottle business.

Q. How about baby food jars?

A. Baby foods—we made some baby food jars. There [fol. 1730] again we had a small quantity out of the total sold in the industry. That was because of our type of machine that we used which did not lend itself to that.

Mr. McManus: Your Honor, I would like to note that I have an objection to this testimony unless he is going to make him his witness. I do not think that the answer is at all responsive. He rambles on for four or five minutes,

and I wish we could have a few more succinct answers to the questions.

The Court: I will allow it. This furnishing the setting in which these letters are being received.

Q. Have you finished your answer?

A. Yes.

Q. Are the machines substantially the same with respect to soluble coffee as for baby food jars?

A. Not wholly, not the same degree.

Q. Was Hazel-Atlas selling containers for instant coffee?

A. We sold some instant coffee jars, I believe limited to one or two accounts.

Mr. Johnson: In view of the purpose of the offer of these documents and the testimony of the witness, I have no further questions at this time.

[fol. 1731] The Court: You still object to the document?

Mr. Johnson: Yes, sir, I do.

The Court: Overruled.

Mr. McManus: May I just ask one question?

The Court: Yes.

Direct Examination continued by Mr. McManus:

Q. During the period that you were with Hazel-Atlas were you in sales primarily?

A. Yes, my entire time with them I was in sales.

Q. You were not on the production end?

A. No.

Q. You are not an engineer?

A. No, sir.

Mr. McManus: That is all.

(Government's Exhibits 777, 778, 779, 782 and 783 for identification received in evidence.)

The Court: All right, thank you, you may step down.

(Witness excused.)

The Court: We will take a recess at this point until five minutes after two, gentlemen.

(Recess to 2.05 p.m.)

[fol. 1732]

AFTERNOON SESSION

The Court: All right, Mr. McManus. —

Mr. McManus: Mr. Hill, will you take the stand, please.

DANA M. HILL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. McManus: Your Honor, I have given a list to the clerk of the documents that we intend to refer to with Mr. Hill. There are one or two that we will not refer to and I would like to give the clerk the exact numbers that we will refer to, and those are 400, 445, 607 and 608.

The Court: Are you going to refer to them in that order?

Mr. McManus: Yes, we are going to refer to them in that order.

The Court: All right. G-400 is first?

Mr. McManus: Yes, sir.

Direct examination.

By Mr. McManus:

Q. Mr. Hill, by whom are you presently employed?

A. The Silver Company in Cleveland.

Q. First, if we could get your background after you [fol. 1733] left college and started your employment, where were you first employed?

A. Corn Products Refining Company here in New York.

Q. And what was your position at that time?

A. I started as a trainee and for the last several years prior to 1954 I was the manager of the commercial research department.

Q. And what were the duties of the manager of the commercial research department generally?

A. We were involved primarily in establishing measures of movement relative to competitive products in both grocery items and industrial starch products.

Q. And then you say you left them in 1954?

A. I did.

Q. By whom were you employed then?

A. Continental Can.

Q. What was your position with Continental Can?

A. Manager of the commercial research department.

Q. For what period of time were you employed by Continental Can?

A. From September of 1954 until the end of March, 1958, [fol. 1734] Q. What was the business carried on and the duties of the commercial research department—

The Court: Let me understand this, Mr. Hill. I have a memorandum here, which is Exhibit G-400, which is dated January 10, 1954, and purportedly signed by you.

The Witness: That is erroneous.

The Court: It is erroneous. All right.

Q. Would you tell us in a general way what were the activities of the commercial research department of Continental Can?

A. Yes, sir. Under the director of economic research, Raymond Fisher, we were responsible, we being a group of about 15 people when it started, for economic analytical studies for the market research work that was done for the corporation, both within the company and by its people as well as working with a few outside agencies, and for the sales analytical function, using and analyzing the sales statistics as they were produced by the IBM group. That generally summarizes it.

Q. Where did you get these sales statistics that you referred to, where would they be procured from?

A. They originated with individual invoice than ran through the IBM and came out in the form of what are [fol. 1735] commonly called IBM reports.

Q. When you were referring to invoices, you were referring to invoices of your own customers?

A. Yes, strictly internal data.

Q. You say that you started out with 15 people. Approximately how many people were in the commercial research department when you left?

A. I am guessing, but the number was about twice that, I would say.

Q. About 30.

A. Yes.

Mr. McManus: I would like to show this document G-400 to the witness, your Honor, and I would like to explain first

that the Government is not relying on this document on any statistics that refer to Canada and the method in which the product is packed in Canada. We are only referring to the data with relation to the way the food is packed in the United States.

The Court: What is the purpose of this document?

Mr. McManus: Your Honor, we believe that this document shows the competition between the cans and glass in various end products in the United States, fruits and [fol. 1736] vegetables, baby foods and so forth, and I think that there are also catsup and certain other end products in the United States only.

The Court: All right.

Q. Mr. Hill, I show you Government's Exhibit 400. You indicated that you came with the company in September of 1954 and that that date might be erroneous, is that correct?

A. Yes, I believe so.

Q. Is there any question but that that would be your signature?

A. No, sir, I believe it is my signature.

Q. Do you recall this document?

A. I do not.

Q. Is this the type of document that you would normally prepare?

A. It is.

Q. And you would in turn send it on to Mr. Fisher?

A. Yes, sir.

Q. And do you know to what use this would be put after Mr. Fisher received it?

A. No, I do not.

The Court: Who was Mr. Fisher at that time?

[fol. 1737] Q. Would you tell us?

A. Mr. Fisher was my direct superior. His title at that point was Director of Economic Research.

The Court: And commercial research was a branch of economic research?

The Witness: Yes, sir.

Q. Could you tell us how commercial research would go about obtaining information for this type of study?

A. Primarily we would utilize public or published infor-

mation, either as it was made available by governmental groups or trade associations.

Q. And what would some of the governmental groups be?

A. The Census Bureau primarily.

Q. And would that be true for the cans?

A. Yes.

Q. Would that also be true for your glass information?

A. I am not certain of that but I believe it would.

Mr. McManus: Your Honor, the Government offers G-400.

Mr. Johnson: May I ask a few questions, please?

[fol. 1738] The Court: Yes, Mr. Johnson.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Mr. Hill, how long had you been employed by Continental Can when you prepared this document which is Government's Exhibit 400?

A. I am not certain because I can't remember specifically but I would gather it would have been a very short time.

Q. One month?

A. I can't be certain.

Q. Was it prepared in 1954?

A. I believe it would have been.

Q. Where did you get the figures that compose table 1 of this document on page 4?

A. This is the same general—

Q. Where did you get those figures specifically?

A. I can't answer, sir, because I can't remember the general study.

Q. The source that is indicated is Western Canner & Packer?

A. Yes.

Q. Did you yourself take them out of Western Canner & Packer?

A. No, I did not.

[fol. 1739] Q. What is Western Canner & Packer?

A. It is a publication which compiles rather precise data on packs.

Q. Is it a magazine?

A. It is a periodical.

Q. It is a periodical?

A. Yes.

Q. Will you tell me what fruits and vegetables and juice packs are included within those figures?

A. I can't beyond what the footnote says because my memory is very, very vague.

Q. Do you know if juices, concentrated juices, prepared for freezing, would be included?

A. I don't know. I assume not but I am not certain.

Q. Do you know whether baked beans would be included?

A. No, I do not.

Q. Do you know whether these figures were taken directly from this periodical or whether any adjustments were made in them?

A. I don't know that either.

Q. Do you know whether these figures represent different sizes of containers?

[fol. 1740] A. No, I have no idea.

Q. And I think you said that you did not know what use had been made of this document?

A. That is correct.

Q. Will you look at chart 1 on page 3. Do you know where the data from which this chart was based came from?

A. Only as I have seen it in the footnotes in the table that was just in front of me.

Q. Does this chart reflect the figures that are in table 1 on the following page?

A. I don't know. I would assume that it does but I don't know that it does.

Q. Looking at the chart on page 7, do you know where the data came from which that chart was constructed?

A. No, I do not.

Q. Do you know what specific products were included in the term "fruits, vegetables and juice packs"?

A. At this time I do not.

Q. Do you know whether you ever knew what was included?

A. If my memory is correct, I don't think that—may I start again?

[fol. 1741] Q. Surely.

A. I suspect I did but I can't remember. That's the best way to answer it.

Q. Looking at the chart on page 8, do you know where the data from which those charts were constructed came from?

A. No, I do not at this time.

Q. Did you prepare this chart?

A. No, I did not.

Q. Do you know who did?

A. No, I do not.

Q. Was this chart that is headed "United States" on the lefthand side of page 8 constructed from the figures that are in table 3 on page 9?

A. I would have to look—I don't know, but I suspect probably it was. My memory doesn't tell me so, if that is pertinent.

Q. The table on page 9 indicates one source as National Canners Association. Do you know if those figures were obtained from National Canners Association?

A. Well, I can simply surmise they were.

Q. That is your surmise?

A. That is correct.

Q. Can you tell me what publication of the National [fol. 1742] Canners Association they were obtained from or whether or not they were obtained directly from the National Canners Association?

A. I can tell you neither.

Q. Did you prepare this table?

A. I did not.

Q. Do you know whether any adjustments were made from any figures that might have been obtained from National Canners Association?

A. At this time I can't say whether or not there were any adjustments.

Mr. Johnson: I object to this document, your Honor.

The Court: Is there anything further, Mr. McManus?

[fol. 1743] Mr. McManus: Well, your Honor, I would like to hear how you are going to rule before I go any further.

The Court: Oh.

Mr. McManus: I had hoped I would not have to go any further.

The Court: I see. I wondered if you wanted any further opportunity to examine before I rule.

Mr. McManus: No, sir.

The Court: Now, suppose before I rule you define a little further what you offer this for? Do you offer this document for the truth of the facts contained in it, or not?

Mr. McManus: Maybe I ought to ask him one or two more questions.

The Court: May be.

Direct Examination Continued.

By Mr. McManus:

Q. Now, Mr. Hill, you of course had people in your employ who were compiling this information; is that correct?

A. That is correct, sir.

Q. And you acted in a supervisory capacity on matters of this type?

[fol. 1744] A. Yes, sir.

Q. And of course you as such, when they referred to a source, such as the National Cannery Association, that would be obtained by one or more of the people working for you?

A. That is correct, sir.

Q. And at the time of your supervision was it your job to attempt to get the best information that was available?

A. I believe that is a fairway to put it, sir.

Q. And in this case do you recall if you made every attempt to get the best information available?

Mr. Johnson: I object to that question.

The Court: Objection sustained.

Mr. McManus: Your Honor, we offer this document on two grounds. First we offer it on the ground that this was the best source of information available, and to that extent, for the truth of what it contains.

The Court: Well, upon that ground I sustain the objection.

Mr. McManus: We also offer it to show the concern of Continental Can towards inroads that glass has made or may make.

[fol. 1745] The Court: As to the latter, I will admit it.

(Government's Exhibit 400 for identification received in evidence.)

Mr. McManus: Your Honor, the next document is Government's Exhibit 445.

Q. I show you Government's Exhibit 445; is that your typewritten name at the bottom, Mr. Hill?

A. That is correct, sir.

Q. And who is Mr. C. H. Buckley, or who was he at that day?

A. Mr. Buckley was the product manager for, I believe, beer and soft drink cans of Continental Can.

Q. And do you recognize this report, Mr. Hill?

A. I recognize it as one of the type reports we put out, yes.

Q. This would be the routine type of report that you would make on a product?

A. Perhaps the word "routine" wouldn't apply, but it is the type of report we made.

Q. Now, in compiling this report—well, the pages are unnumbered; it is the fourth page of the document, and it says, "Method of conducting survey." Would you take a look at that next one?

[fol. 1746] A. Yes.

Q. Do you recall would that be the method that you would conduct such a survey?

A. It would.

Q. And would these surveys be conducted by you or by outside companies?

A. Both, sir. In this case we did it ourselves.

Q. In this case you did it yourselves.

A. Yes.

By the Court:

Q. Who is Mr. Way, a member of your staff at that time?

A. Your Honor, Mr. Way was one of the analysts in my group at that time.

Q. Did you assign Mr. Way to make the study that is reported in this document?

A. Yes, sir; I did.

Mr. McManus: Now, your Honor, we offer this document for the conclusions found on page, what I would call the third page of the document.

The Court: You may examine if you wish, Mr. Johnson.

Mr. Johnson: In the light of the testimony with respect [fol. 1747] to this document by Mr. Buckley the other day, I have no objection to it.

The Court: All right, it may be received.

(Government's Exhibit 445 for identification received in evidence.)

Mr. McManus: Your Honor, we can take 607 and 608 together, I believe, sir.

Q. I show you Government's Exhibit 607, Mr. Hill; is that your signature on page 2?

A. Yes, sir.

Q. And is this the type of survey that would be made by the commercial research department?

A. It is one of the types, yes, sir.

The Court: Was this made by your staff?

The Witness: No, sir.

Q. Who would make the survey?

A. I believe this was conducted by the Hooper, I think it is C. E. Hooper organization.

Q. And was this a continuing type of survey? I mean, was this one of a series, do you know?

A. That is one of a series, or that is reporting on one of a series.

Q. And would 608 be—608, on page 3; is that your signature?

[fol. 1748] A. That is, yes, sir.

Q. And would this be another part of the series of 607, if you would like to take a look?

A. Yes, it would.

Q. And could you tell me, do you supervise these surveys? I mean, did you make the arrangements to have these surveys conducted?

A. This particular series, I believe, was started before I came on the scene, because that date there, September 17th, was just about the day that I first went to work.

Q. And the latter survey was in October, and you had been employed for approximately a month.

A. Right, sir.

Q. Now, did the C. E. Hooper report to you or to Continental Can?

A. Yes, they did.

Mr. Johnson: That is a double question.

The Court: Presumably, we are talking about did they report to you in your capacity as head of the commercial research department?

The Witness: Yes, sir. They didn't report directly to me, sir. They reported to a man who worked for me.

[fol. 1749] The Court: I see. Who in turn reported to you.

The Witness: Yes, sir.

Q. And from those surveys you made up these two documents to Mr. Buckley?

A. My group did, yes, sir.

Q. Your group did. And you sent them on with your covering letter?

A. I did.

Q. And do you know for what purpose or what use these documents were put?

A. I am afraid not, sir.

Q. And do you know how the C. E. Hooper conducted these surveys?

A. I can probably remember some of the details, yes, sir.

Q. Could you tell me how they were conducted?

A. The best of my recollection, they worked from general telephone lists; preselected names; called the given number of names with the said group of questions; asked those questions; and recorded the answers; tabulated the answers and gave them to us in tabulated form.

Q. Now, you have been head of commercial research [fol. 1750] departments for a number of years. Is that a standard type—in your experience, is that a standard way of conducting surveys?

Mr. Johnson: I object to the question.

The Court: Sustained.

Mr. McManus: Your Honor, the Government offers 607 and 608 on two grounds, the first being the fact that these surveys were conducted for the Continental Can Company and that they are truthful and accurate surveys; and sec-

ond, on the ground of showing the attempt by the company to enter the glass, enter the bottling of soft drinks through the use of metal cans.

The Court: Do you want to examine with respect to these documents, Mr. Johnson?

Mr. Johnson: Yes, sir.

Preliminary Cross-examination.

By Mr. Johnson:

Q. Mr. Hill, did you have anything to do with the selection of the people who were telephoned by the Hooper Agency?

A. None whatever, nothing, sir, no.

Q. Do you know how these people were selected?

A. I did at the time, I believe, but I cannot remember precisely now.

Q. Do you have any idea now from what groups they [fol. 1751] were selected?

A. No, I don't, sir.

Q. Do you know whether they were selected at random or not?

A. I am certain that there was a random factor. Whether parts of the population were excluded before the random selection occurred, I can't answer. My recollection just doesn't produce.

Q. With respect to the San Francisco survey, do you know what part of San Francisco the survey—do you know in what part of San Francisco the survey was made?

A. No, I do not.

Q. Do you know if it was made in a high income or low income area?

A. I am not certain, no, sir.

Q. If I were to ask you the same questions with respect to Los Angeles, Philadelphia, New York, Milwaukee—

A. My answer would be the same, sir.

Q. —Denver, Akron, your answer would be the same?

A. Yes.

Q. Did you have anything to do with the preparation of the questions which the Hooper Agency asked?

[fol. 1752] A. In the case of these questions, I doubt it.

very much. I had only been on the scene, as I think, two days.

Q. Do you know what questions they asked?

A. I cannot remember what questions they asked, no, sir.

Q. Do you know whether the Hooper agency did any pre-testing of its questions?

A. I am not certain. I believe they did, but I am not certain.

Q. Do you know whether they used a bias factor?

A. No, I do not know. I can't remember, is a better way to answer, sir.

Q. Do you know how the scope of the sample was determined?

A. I am not sure I know what you mean by "the scope of the sample." I am not sure if I did, I could answer anyway.

Q. The document says that "In New York and Los Angeles the sample remained at 1500 calls, but was reduced to 1200 in the other five cities." Do you know how that sample was determined upon?

A. No, I do not, sir.

[fol. 1753] Q. Do you know if it had anything to do with the budget allocated to this project?

A. No, I do not.

Q. Do you know what the budget was for this project?

A. I cannot remember what the budget was.

Q. Do you know whether it was large or small?

A. Relatively small, sir.

Q. Were you ever an officer or director of Continental?

A. No, I have not been.

The Court: 607 and 608 are just, in essence, a continuation of one another, are they?

The Witness: I believe they are, sir.

The Court: Called the same?

The Witness: Continuing series of surveys.

Q. So my questions with respect to 607 would be the same with respect to 608; is that true?

A. My answers would be the same, sir?

Q. Yes.

A. Yes, they would be, and I would have known a bit

more, having been around about two or three more weeks when the second one was prepared, sir.

Q. Now, in your position you did not have power to [fol. 1754] commit Continental to action?

A. I did not, sir.

Q. And I think you said you didn't determine policy for the company?

A. Did not determine policy for the company.

Mr. Johnson: I object to the documents, your Honor.

The Court: Well, insofar as the Government offers the documents for the truth of the facts of the documents, I will reject them. Insofar as the Government offers the documents to show that the commercial research department of Continental Can had a survey made and drew certain conclusions as a result of the survey and circulated those among responsible officers of Continental Can, I will admit it.

Mr. Johnson: In that connection, your Honor, I am concerned with the problem of documents being admitted for limited purposes, and I would like again to revert to the suggestion Mr. Hughes made this morning, that I have no objection to stipulating, if that would be of any help, that surveys of this type were made. It seems to me that we are getting into a real problem as to just how much is [fol. 1755] going to be drawn from a record which has in it a great number of documents containing figures of all kinds which are admitted for a very limited purpose.

The Court: What do you say to that, Mr. McManus?

Mr. McManus: Your Honor, I would think you would admit it on my first ground, but I think it is obviously admissible on the second ground, and it goes a little further than just the fact that they made the survey. As you pointed out, they were distributed to responsible officers in Continental Can.

The Court: And certain conclusions were drawn from them.

Mr. McManus: That is correct. And on those grounds I think it is entirely admissible.

Mr. Johnson: Well, it is a question that Mr. McManus raised as to—he says they go further than that. My question is how much further, and where further do they go?

The Court: We can find how far they go, Mr. Johnson, but really, frankly, I don't know why under the circumstances Mr. McManus needs the summary of the soft drink surveys, why he can't be content with pages 1 and 2 of 607 for the limited purpose for which I am admitting [fol. 1756] this document?

Mr. McManus: Your Honor, if you are not admitting it for the truth of the matters contained therein, I agree with you that the pertinent part of his document in 607 is pages 1 and 2, and in 608, pages 1, 2 and 3.

The Court: Yes.

Well, I will limit the two documents to pages 1 and 2 of 607 and 1, 2, and 3 of 608.

Mr. Johnson: For purposes indicated, your Honor.

The Court: For the purposes indicated.

(Government's Exhibits 607 and 608 for identification received in evidence.)

Mr. Johnson: One further question.

By Mr. Johnson:

Q. These documents, Mr. Hill, indicated that they were distributed to various people in Continental Can. Do you know whether these people ever drew any conclusions from these documents or took any action based on them?

A. No, sir; I do not.

Mr. Johnson: That is all.

[fol. 1757] The Court: All right, Mr. Hill, you may step down.

(Witness excused.)

The Court: Next witness.

Mr. Greenberg: Your Honor, the Government's next witness is Mr. Smart.

Will Mr. Smart take the stand.

S. BRUCE SMART, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Gibson Island, Maryland.

Q. Are you employed by Continental Can?

A. Yes, sir.

Q. How long have you been employed by this company?

A. Since May 1, 1953.

Q. In what position, sir?

A. Initially?

Q. Well, we will start with your employment on May 1, 1953. That is when you first became employed by the company; is that correct?

A. Assistant products sales manager for packers cans in the metal division.

Q. How long did you hold that position?

[fol. 1758] A. Approximately one year.

Q. And what were your duties and responsibilities as assistant products sales manager?

A. Well, I worked with the products sales manager in the obtaining and dissemination of sales information as it has been described earlier to the field sales force.

Q. To the field sales force, that is, the distribution.

A. Right.

Q. Now, were you employed as assistant products—

Mr. Greenberg: Withdrawn.

Q. What was your employment after June 1, 1964, with Continental Can?

A. I was assistant products sales manager for beer and soft drinks.

Q. How long did you hold that position?

A. About a year there, too.

Q. And what were your duties and responsibilities in that position?

A. Very, very similar, except with concern for different types of cans.

Q. When you say "similar," you disseminated the material in the same way?

[fol. 1759] A. Yes.

Q. What was your next position?

A. I was assistant to the general manager of sales.

Q. And in what period of time did that occur?

A. Till February of 1956.

Q. And what were your duties and responsibilities in that position?

A. Rather varied. Carrying out any assigned duties, including budgets, sales forecasts, answering certain amount of correspondence, certain amount of liaison with research and development department.

Q. And what was your employment after February of 1956?

A. I was assistant to the manager of new products.

Q. And what was the duration of that position?

A. About three or four months.

Q. And what were your duties in that position?

A. We were setting up a department for the investigation and coordination of work on new containers, and I assisted Mr. Newman in setting up that department, determining what its scope should be.

Q. Now I show you Government's Exhibit 421-A, which has been marked for identification, and ask you if you [fol. 1759a] recognize this document?

A. Yes, I do.

[fol. 1760] Q. What is it, sir?

A. Well, it is a write-up of a bright idea that I had considering the possibility of developing a can for tomato catsup.

Q. Sir, at the bottom we have the notation, "L. C. Dudley per S. B. Smart."

Who was Mr. Dudley?

A. Mr. Dudley was the products sales manager and as such was responsible for whether this document should leave his office and go to Mr. Neuman, and therefore his name appears on it and my name below it as the actual author of the document.

Q. In other words, after his name appeared above it, it went to Mr. Neuman?

A. That's right.

Q. And Mr. Neuman received it?

A. Yes, I presume he did.

Q. And what was Mr. Neuman's position at that time?

A. He was general manager of sales for the Metal Division.

Q. Who was Mr. Larson at that time?

A. Mr. Larson was in a department which I think was called New Products Development Department or [fol. 1761] some such name as that, and it was his job to consider proposals such as this and determine whether they were feasible or not.

Q. Sir, from the notation on the document, isn't it true that Mr. Larson received it?

A. The notation would indicate that Mr. Neuman sent the document to Mr. Larson.

Mr. Greenberg: The Government offers G-421-A into evidence.

The Court: For what purpose?

Mr. Greenberg: Your Honor, we offer it for the truth of the facts stated therein, but, in addition, it shows Continental Can's interest in new products which are being serviced by glass containers, in this instance, catsup, and those activities, your Honor, are still being carried on. This document, together with other documents, will show the competitive figure of Continental Can in glass containers.

The Court: All right.

Mr. Hughes: What was that, the truth of the facts—

The Court: That it goes to the truth of the matters contained therein and for the statements or conclusions [fol. 1762] or the suggestion that such a project was passed on.

Mr. Hughes: I object to it on the first ground, your Honor, that no proper foundation has been laid and no indication shown that it has any probative value, and I also object to it on the second ground.

The Court: Do you wish to examine?

Mr. Hughes: Yes.

Mr. Greenberg: Excuse me, I will put the Government's copy of the document before the witness.

The Court: Yes.

Preliminary examination.

By Mr. Hughes:

Q. Mr. Smart, how long had you been with the company when you prepared this document, Exhibit 421-A?

A. Approximately three months.

Q. Prior to coming to Continental Can Company what had you done?

A. Well, immediately prior I was with the Corps of Engineers of the United States Army, and prior to that for several years in the business of designing and selling industrial water conditioning equipment.

Q. And prior to that what was your business background?

A. No business background, just military.

[fol. 1763] Q. So that you had been connected with the can industry—

A. For about three months.

Q. —for about three months when this document was prepared?

A. Yes.

Q. Do you recall whether Mr. Neuman requested its preparation?

A. I couldn't answer that; I don't recall.

Q. Do you recall whether anybody requested its preparation?

A. I do not.

Q. Would you say that this was—I think you characterized it as a bright idea that you had, and that you just put down on paper?

A. It seemed so at the time.

Q. And what were the sources that you used in preparing this document?

A. I could only speculate on what they were; I don't remember.

Q. You don't recall what the sources were?

A. No.

The Court: For example, Mr. Smart, I notice on the first page of the document that there are figures [fol. 1764] about average annual packs of tomato catsup.

for 1951, 1952 and 1953. You do not know where those figures came from, do you?

The Witness: I don't recall, sir, no.

By Mr. Hughes:

Q. Now there is a legend on the document, on the first page, which, if I read it correctly, says:

"R. Larson: I've sat, on this too long already—
what do you think!"

Are those the initials of Mr. Neuman?

A. Yes, they are.

Q. And you have told us who Mr. Larson was?

A. Yes.

Q. Do you know whether in fact Mr. Neuman referred this to Mr. Larson?

A. I only know what I read on that note.

Q. You were not an officer of the corporation at the time you prepared this document?

A. No, sir.

Q. And it did not receive any circulation outside the company?

A. Not to my knowledge.

Q. You had no power to commit or bind the corporation in any way?

[fol. 1765] A. No, sir.

Q. You did not make any policy for the corporation?

A. No, sir.

Mr. Hughes: I object to it, your Honor.

The Court: Let me ask you this:

As far as you know, was there ever such a project authorized?

The Witness: To my knowledge, no, sir.

Mr. Greenberg: I just wanted to ask a few more questions, your Honor.

By Mr. Greenberg:

Q. After July 1, 1956 what position did you hold with Continental Can?

A. I was assistant district sales manager in Milwaukee.

Q. And since that time what was your position?

A. Subsequent to that, district sales manager in Milwaukee and general manager for the mid-eastern district of the Metal Division.

Mr. Greenberg: I have no further questions.

The Court: I have your objection, Mr. Hughes.

Mr. Hughes: I renew the objection on the first ground. [fol. 1766] The Court: As to the first ground on which this was offered, let me ask you this, Mr. Smart:

These figures on the second and the third pages with respect to comparative figures, where did you get those from? Are those your own calculations?

The Witness: No, sir. I don't recollect where I got them from now.

The Court: Well, I will exclude it on the first ground and permit it on the second ground.

(Government's Exhibit 421-A for identification received in evidence.)

The Court: Is there anything more from this witness?

Mr. Greenberg: Your Honor, we have no further questions and no further documents to take up with this witness.

The Court: Thank you, Mr. Smart, you may step down.

(Witness excused.)

Mr. Greenberg: Your Honor, the next witness is Mr. Cleaves.

[fol. 1767] RICHARD D. CLEAVES, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. I reside in Louisville, Kentucky.

Q. And you were employed by Continental Can at one time?

A. Yes.

Q. When was that?

A. Approximately five and a half years, from January of 1953 to July of 1958.

Q. What positions did you hold with the company during that period of time?

A. After January 1953 or in the spring of 1953, after a short orientation course, I became a salesman in the New York district sales office of the Metal Division. Subsequently I was made assistant district sales manager of the New York district, and then became products sales manager in the Metal Division head office for commodities, meat, pet foods and non-processed foods, and subsequently was made vice-president and general manager of Cochran Continental Container Corporation of Louisville, Kentucky.

[fol. 1768] The Court: Is that a subsidiary of Continental Can?

The Witness: It was; it is no longer.

Q. Sir, is it true that you were products sales manager in the period April 1955 to September 1957?

A. Yes, that is right.

Q. Sir, would you tell us what your duties were as products sales manager in that period of time?

A. In connection with the commodities for which I was responsible and which I mentioned, it was securing and dissemination of sales information and sales aids to the field sales force of the metal division.

Q. I show you Government's Exhibit 404, which has been marked for identification, and ask you if you recognize it.

A. Yes, sir, I do.

Q. Tell us what it is?

A. This is a product sales bulletin, which is an information bulletin, to go to the field sales force, concerning, in this case, the so-called Savorlock cans.

The Court: Was the Savorlock can then being sold by the sales force on the market?

[fol. 1769] The Witness: It was available, sir, but was not being sold.

Q. Was it being market or test-marketed by J. H. Folger Company at that time?

A. Yes, that was the—you see, that is August of 1956 and

it is my—if I remember correctly, it was test marketed by Folger in 1955.

Q. I see.

The Court: In other words, you were prepared to offer this can for sale?

The Witness: Yes, your Honor.

Q. And what distribution did this have?

A. That had internal distribution in the Continental Can Company Metal Division to the sales force, that is, district sales managers, general manager or sales in that division, and to the salesmen themselves.

The Court: Is there any objection to this?

Mr. Hughes: No objection.

The Court: It may be received.

(Government's Exhibit 404 for identification received in evidence.)

The Court: What about the next document, which is 405, on the same subject?

Mr. Greenberg: Are you asking whether Mr. Hughes has [fol. 1770] any objection?

The Court: I am asking whether there is any objection to that.

Mr. Hughes: Well, your Honor, I would like to ask whether this document, 405, was merely a draft of some sort of a document.

The Court: Yes, I think that is a fair question.

Mr. Greenberg: Well, I think there are various parts to G-405, your Honor.

The Court: We will take it separately then, if you want to. I am just trying to save some time because we are going very slowly at this point.

Mr. Greenberg: What was Mr. Hughes' objection, your Honor? I don't fully understand.

The Court: He did not make any suggestion, as far as I know.

Mr. Hughes: I asked if it was a draft.

The Court: Yes. Ask the witness whether it was a draft, or I will ask him.

Was it a draft?

The Witness: From the date on it, sir, I believe it was, June 1956. I believe that was a draft. May I explain why? [fol. 1771] **The Court:** Yes.

The Witness: The reason that I think so is because the actual bulletin which went out on the Savorlock can was dated August, 1956.

The Court: In other words, this was the predecessor of 404, was it, the products bulletin?

The Witness: Yes, it was part of the program, at least in draft form.

By Mr. Greenberg:

Q. Sir, 405, the first page of G-405 refers to a freight car allowance or freight allowance to be offered to these packers who would use this new coffee can. Do you know whether the sales force had permission and actually did offer this freight allowance?

A. I cannot remember whether that was approved or not.

Q. Now I show you the second part of G-405—

Mr. Hughes: Perhaps I should object at this point on the ground that it appears it is a draft and that it had no circulation of any kind.

The Court: Yes, this is merely a draft and I do not see that it has any probative value at all.

Mr. Greenberg: Your Honor, the Government now requests the defendant to produce any final copies, if such [fol. 1772] exists, of this document.

Mr. Hughes: That document is already in evidence, G-404.

Mr. Greenberg: All right. As I understand it, this document deals specifically with freight allowances only. If a special communique, not in draft form, went from the company to its divisions—

The Court: No, Mr. Greenberg, it does not deal only with freight allowances.

Mr. Greenberg: The first page of 405.

The Court: Yes, the first page does.

Mr. Greenberg: That is what I am referring to, the first page of 405.

Mr. Hughes: May I answer that by saying, your Honor,

that in the pretrial we made an extensive search and pursuant to order we have produced and discovered to the Government everything that we have been able to find.

The Court: Well, I sustain the objection on the ground that it is a draft.

By Mr. Greenberg:

Q. I now show you the second part of G-405 which is entitled "Continental's new Savorlock can" from R. D. Cleaves dated June 1956, which is composed of five pages.

[fol. 1773] Mr. Greenberg: I am merely trying to identify this for the record, your Honor.

Now I ask you, sir, to look at this document --- ask you if you recognize it.

A. I do.

Q. Tell us what it is?

A. This is—this was a technique of trying to anticipate questions which the salesmen in the field might be asked by customers or prospects, and to answer those questions in a simple form which I hoped they would read.

Q. What distribution did this document have?

A. This had exactly, as I understand, the same distribution as for the other documents which you mentioned, which was for the field sales force.

Q. In other words, this was distributed to the sales force?

Mr. Greenberg: The Government offers the second part of G-405 as described in the record.

Mr. Hughes: Your Honor, there is some confusion in my mind, because this document was put together by us and apparently what you say is the second part appears [fol. 1774] to me to be the first part. You are talking about the questions?

Mr. Greenberg: Yes, the questions.

Mr. Hughes: May I ask a question or two on this, your Honor?

The Court: Yes.

Preliminary examination.

By Mr. Hughes: ●

Q. Referring now to the questions, were there questions in this form distributed to the sales force?

A. Mr. Hughes, I must say again that because of that date of June 1956 this may have been a draft. In this particular case, however, I can say that that document or a very similar document went to the field sales force.

Mr. Hughes: I have no objection to it.

The Court: It may be received.

Mr. Hughes: But it is just those five pages.

The Court: Wait a minute. The way I see it here, Mr. Hughes, it runs through—

Mr. Hughes: Five pages, your Honor, of questions.

The Court: Yes, five pages of questions. Now there is a third part to it.

Mr. Greenberg: Exactly, your Honor. G-405 encom-[fol. 1775] passes ten pages and it is entitled "Continental's new Savorlock can" from R. D. Cleaves, dated June 1956.

Q. I show you this document and ask you if you can identify it.

A. Well, now, there again this has to be a draft, because going back to the first exhibit, you have the picture of the can on there, and if you look at the first paragraph of this and the first paragraph of that, I think you will find that it says the same thing.

Q. All right. When you say a draft, you mean a draft of G-404?

A. A preliminary draft, yes, sir.

The Court: If we have 404, what do we need this one for?

Mr. Greenberg: Very well, your Honor.

Mr. Hughes: Your Honor, is the record clear as to what is being received?

The Court: The middle section of this entitled "Continental's new Savorlock can," consisting of five pages is received and all the rest of it is excluded.

Incidentally, gentlemen, I will expect you at the conclusion of the session to try to give some assistance to the clerk in following the marking of these documents, which [fol. 1776] is not too easy under all the circumstances.

By Mr. Greenberg:

Q. Now, Mr. Cleaves, I show you Government's Exhibit 408 for identification and ask you if you recognize it.

A. Yes, sir, I do.

Q. What is it?

A. This was a bulletin which was entitled "New Product Development," which was preliminary information to the field on a new product which was being introduced in the same line. It had, if I may say, the same field circulation as these other product bulletins.

The Court: Is there any objection to that, Mr. Hughes?

Mr. Hughes: No objection.

The Court: It may be received.

Q. I would just want to ask you, who was Mr. Brachle?

A. Mr. Brachle at that time was in the Central Division, the Chicago office, and had in the division the same commodities and the same functions within the division that I had in the head office; in other words, he was in non-processed foods, meats and so forth.

Mr. Greenberg: G-408 is now in evidence, your Honor?

The Court: Yes.

(Government's Exhibit 408 for identification received in evidence.)

Q. I now show you Government's Exhibit 409 for identification and ask you if you recognize it.

A. Yes, sir, I do.

Q. What is it?

A. Let me just take another look at it. This is an information bulletin to the sales department. I cannot specifically say to whom it went except that I know it went only to the field sales force.

Q. Are you saying that it did go to the field sales force?

A. Yes, it did go to the field sales force.

Mr. Greenberg: I offer G-409 into evidence.

Mr. Hughes: What is the purpose of the offer, please?

The Court: Yes.

Mr. Greenberg: Well, your Honor, we think it shows that this company directed its sales force to documents such as this to compete with glass container manufacturers. [fol. 1778] The Court: That is the conclusion you draw.

Mr. Greenberg: We are offering it—

The Court: You are offering it as evidence on that subject?

Mr. Greenberg: That is correct, your Honor.

Mr. Hughes: I object, your Honor, on that ground?

The Court: Overruled.

(Government's Exhibit 409 for identification received in evidence.)

By Mr. Greenberg:

Q. I now show you Government's Exhibit 410 for identification and ask you if you can identify it, sir.

A. Isn't that the same as the other, sir?

Q. It is addressed to a different person.

The Court: We are not going to have duplications of the same material just because they are addressed to two different people.

Q. Who was Mr. Hatfield?

A. Mr. Hatfield was general manager of sales at that time in that office, but he was on the regular list to re-[fol. 1779] ceive it.

The Court: Let us eliminate 410.

Mr. Greenberg: Eliminate 410?

The Court: That is what we are dealing with. It is the same as 409, is it not?

Mr. Greenberg: Well, let us eliminate 409 instead, your Honor, because Mr. Hatfield at that time—

The Court: Well,—

Mr. Greenberg: All right, we will follow your order.

The Court: 409 is to be marked in evidence. Let the record show that Mr. Hatfield got it.

Mr. Greenberg: Very well, thank you.

We have no further documents to cover with this witness.

The Court: All right. Do you want to ask a few questions of this witness?

Mr. Hughes: Yes, your Honor.

Cross-examination.

By Mr. Hughes:

Q. Mr. Cleaves, these documents, 404, 408 and 409 relate to the so-called Savorlock can project, is that right?

A. Yes.

[fol. 1780] Q. Can you tell us when or about when the company embarked upon this Savorlock can project?

A. Well, I cannot tell you exactly because—

Q. Approximately?

A. I can't even tell you approximately, sir, because it was—the small can was a fait accompli at the time that I was made sales manager and I inherited it.

Q. And they made two sized cans, did they?

A. Yes, sir.

Q. What sizes?

A. A size to hold two ounces of soluble coffee and a size to hold six ounces of soluble coffee.

Q. And the idea was to use them and to sell soluble coffee to people who packaged soluble coffee, is that right?

A. Yes, sir.

Q. Now will you tell us what attempts were made to use the Savorlock cans commercially?

A. Attempts by packers?

Q. Well, attempts by Continental in cooperation with packers, let us put it that way.

A. Well, J. H. Folger Company with offices in Kansas City, the Central Division, made a so-called commercial test [fol. 1781] of their soluble coffee in the small cans.

Q. And with what results?

A. With the results that they lost all interest in it, sir.

Q. Actually they withdrew the can from the market, did they not?

A. They did.

Q. They discontinued their line?

A. They did.

Mr. Greenberg: I am going to object to that, your Honor, unless we have a time period.

The Witness: I can give it to you.

By Mr. Hughes:

Q. Give me the time period.

A. Well, Folger started packing cans in I believe July of 1955—in fact, I will say it was in July of 1955, and they ran their market test, to my recollection, starting in August of 1955 for about six or eight weeks.

Q. And following that they withdrew the line, as you have described?

A. They pulled it off the shelves, yes, sir.

The Court: Have you got any such line now?

The Witness: Do they have?

[fol. 1782] The Court: No, have you? You don't know because you are no longer with Continental.

Mr. Greenberg: He was with Continental until 1957, your Honor, and he would know about that in that period.

The Witness: Yes.

By Mr. Hughes:

Q. Did you still offer the can up to 1957?

A. Yes, sir.

Q. With what results?

A. Well, with very poor results. It was not accepted.

Q. Did anybody after this experience at Folger pack soluble coffee in Savorlock cans?

A. Yes, they did. The Pennco at Linden, New Jersey, which is a contract packer of soluble coffee, at the time that I was about to go to Louisville, they, for an export order, placed an order for a very small quantity of cans, I don't remember how many, but it wouldn't have been more than a few hours run on the line, and I do not believe they had taken delivery when they stopped part of it, but I understand that they did take the cans.

Q. And they shipped them to South Africa?

[fol. 1783] A. That is my understanding.

Q. And what happened then?

A. I have been told, sir—

Mr. Greenberg: I object to that.
The Court: Sustained.

Q. In any event—

The Court: We are not going to have this witness tell us what happened in South Africa.

Mr. Hughes: I think that is fair enough, your Honor.

Q. In any event, so far as you know, did Pennco ever come back for a repeat order?

A. Not to my knowledge.

Q. And do you know of anybody else who ever has used a Savorlock can for soluble coffee?

A. No, sir.

Q. Do you know whether Continental is now presently trying to—

Mr. Hughes: I withdraw that.
That is all.

Redirect examination.

By Mr. Greenberg:

Q. Sir, isn't it true that Sanborn has considered using the Savorlock can?

A. I would say that they definitely were interested in it, [fol. 1784] to my knowledge.

Q. Did they consider it, do you know?

A. I think, yes, they and others in the industry.

Recross examination.

By Mr. Hughes:

Q. And having considered it, they didn't use it, is that right?

A. That is correct.

Mr. Hughes: No further questions.

The Court: All right, thank you; you are excused.

(Witnessed excused.)

The Court: Now you are going to have Mr. Heinen's testimony.

Mr. McManus: Yes.

The Court: There is only a single document with him?

Mr. McManus: Two, your Honor.

The Court: Well, we will take a brief recess now before we get to Mr. Heinen.

[fol. 1785] The Court: Next witness.

Mr. McManus: Mr. Heinen.

JOHN M. HEINEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Heinen, are you presently employed by Continental Can Company?

A. Yes.

Q. For how long a period have you been employed by that company?

A. Since September, 1937, except for a period when I was in the Navy, three years.

Q. What have your duties been with Continental Can?

A. Well, the first assignment was as research engineer, in the research department, in the Chicago metal division. That assignment lasted through till I went into the Navy, and then when I came back, was research engineer from January, '46, till about '48, roughly. Then I was assistant manager of the packaging laboratory at that time, and became manager in about '52, and the name was changed, I think it was '54, to packaging engineering, and my present assignment is manager of packaging and engineering in the metal division, research and development.

Q. I would like to show you Government's Exhibit 609, Mr. Heinen, and ask you if you recognize that document?

A. Yes.

Q. Could you tell me what this document is? Is it a speech that you made?

A. Well, as I recall, it was a talk that I prepared and

gave, I am not sure which. It could have been one. I believe it was given within Continental Can Company.

Q. Within Continental Can Company?

A. I believe so.

The Court: To whom did you give the talk? Who was present?

The Witness: Well, it isn't identified here. It is just entitled "Canned Carbonated Beverages." It may have been given to our technical field representatives. We have meetings, annual meetings, with them. I am not certain from this.

Q. Would this be normal, would this be the type of speech that you would make for your technical people? [fol. 1787] A. It might be, yes.

Q. Have you made speeches of this kind concerning carbonated beverage; which would contain subjects of this speech? Have you had a chance to look at this?

A. Well, I just glanced at it. It is 1954. It was apparently a more formal program. It could have been a talk that I made again with the company with our—meeting held with our foreign associates, I am not sure.

Q. Now, if I turn to page 5—excuse me. If I turn to page 4, and if you would look in the middle of page 4, starting with "In any container development," on page

4—

A. And what?

Q.—and if you would glance through there, and over here?

A. Yes.

Q. Now, could you tell me, in your position, would you know if the figures on page 5, the \$200,000 per year, are you in a position to know that those figures are accurate? Would you be?

A. Well, I think they are accurate, yes.

[fol. 1788] Q. How would you obtain that information?

A. I obtained the information from members of our research and development department, who compiled it for me.

Mr. McManus: Now, your Honor, we offer this document only for page 4, starting with "In any container development," and down through the sentence on page 5, which

says, "For the past year and a half Continental has been spending money at a rate in excess of \$200,000 a year to accomplish these objectives." We offer those for the truth of the statement contained therein, and that is the only purpose of the document.

The Court: Yes, Mr. Johnson.

Mr. Johnson: May I just glance at what he referred to?

The Court: Yes, sure.

Mr. Johnson: I have no objection to that portion. However, I do have a few questions to ask the witness.

The Court: You may ask the questions.

Mr. Johnson: Should I wait until he is through with the direct examination?

[fol. 1789] The Court: Well, I understand he is through with the direct examination.

Mr. McManus: That is correct, your Honor.

The Court: On 609, at least. So you may as well proceed, Mr. Johnson.

In the meantime, that portion which was offered will be admitted without objection.

(Government's Exhibit 609 for identification received in evidence.)

Cross-examination.

By Mr. Johnson:

Q. Do you know, Mr. Heinen, if Continental has continued to promote the development and sale of the soft drink containers since the date of this speech?

A. Since 19—

Q. 1954?

A. —54? Yes, we very definitely have continued development work on this container.

Q. And has it done so vigorously?

A. Very vigorously.

Q. Did the acquisition by Continental of the assets of Hazel-Atlas Glass Company have any effect on this program?

A. Had no effect on our research development program, to my knowledge.

[fol. 1790] Mr. Johnson: That is all.

The Court: Anything further, Mr. McManus?

Mr. McManus: No, sir, your Honor.

The Court: Do you have another exhibit?

Mr. McManus: Just one more document, your Honor, which is marked 806.

The Court: 886?

Mr. McManus: Yes, sir, for identification.

The Court: May I have that, Mr. Clerk?

Mr. McManus: This is it, your Honor. I have only one copy.

The Court: Has the other side seen it?

Mr. McManus: Yes, they have, your Honor.

The Court: Is there any objection to this?

Mr. Johnson: I would like to ask a few questions about it.

The Court: All right, ask him first if it is a speech that he made, and where he says he made it.

By Mr. McManus:

Q. Do you recall this speech, Mr. Heinen?

A. Yes, I do.

Q. Where did you make it?

A. It was made at the meeting of the Chemical Special-
[fol. 1791] ties Manufacturers Association in Chicago. The date is in there.

Q. At the date indicated?

A. Yes. I don't remember which of the two days it was.

Q. Either May 21, 1957, or May 22, 1957.

A. Yes.

* The Court: All right, you may examine.

* Mr. Johnson: May I have the purpose for which this document is offered?

Mr. McManus: We are offering this document, your Honor, for the truth of the matter contained herein. Mr. Heinen is a specialist with the company; he is in research development; has been in it for a number of years. He makes a speech here in which he tells about the uses of aerosol containers both in cans and glass, and the possibility also in plastic. He makes a speech and is listed apparently as a representative of the Continental Can Company when he made it.

Mr. Johnson: I object to it, your Honor. Mr. Heinen is

on the stand and I don't believe there is anything in this document that he can't be asked about on the stand.

The Court: Well, I think that may be so.
[fol. 1792] Do you want Mr. McManus to go ahead and go through all this material with him on the stand? Because if that is your desire, I will let McManus go right ahead.

Mr. Johnson: All right, I will withdraw the objection, but I would like to ask the witness some questions.

The Court: You may ask any questions you wish.

Cross-examination continued.

By Mr. Johnson:

Q. Before what organization was this speech made, Mr. Heinen?

A. It was the Chemical Specialties Manufacturers Association.

Q. Did that organization up until fairly recently have a different name?

A. Yes, sir; it did.

Q. Do you recall what it was?

A. It is quite a long name. I believe it was the National Association of Insecticides and Disinfectant Manufacturers.

Q. Now, you refer in the speech to packaging in aerosol [fol. 1793] containers. Is it true, Mr. Heinen, that products which are packed in aerosol containers normally have a different formulation than the same similar products packaged in other types of containers?

A. Yes, this is generally true.

Q. And some of the products that are packaged in aerosol are products which have never been made available before; is that true?

A. Yes, sir.

Q. And is hairspray one of those?

A. Hairspray or hair lacquer, as it is called, is one of those, yes, sir.

Q. You refer in this article, sir, to a figure of aerosol packages. You say, "Aerosol packages accounted for \$320,000,000 last year in the United States alone." Do you know where that figure came from?

A. Not precisely, sir.

Q. What do you mean "not precisely"? Do you know where it came from?

A. Well, the figures were given to me by members of our organization, librarian, the librarian, I believe.

[fol. 1794] Q. Do you know whether the \$320,000,000 refers to cost of containers or to the filled packages?

A. I don't recall now.

Q. You don't know whether it is the containers or the containers and the contents?

A. I am not sure which it was now. It was some time ago.

Q. You refer in this speech to pharmaceutical aerosols and you say, "We can look forward to tremendous gains in this field in the next few years." Have those gains developed as you anticipated they would in 1957?

A. Not yet they haven't, no, sir.

Q. You refer also to possible gains in pressurized dispensers in the food field. Have those gains materialized as you anticipated they would in 1957?

A. No, sir; they have not.

Q. As I understand it, this speech related to all kinds of aerosols, did it not?

A. Yes, it did.

Q. Not simply aerosols made out of any one particular type of material.

A. No, I covered the entire field of aerosols as it was [fol. 1794a] known at that time.

Mr. Johnson: That is all.

The Court: Anything further?

Mr. McManus: None further.

The Court: You may step down, sir.

(Witness excused.)

[fol. 1795] Mr. Greenberg: Will Mr. Neuman please take the stand?

He is our last witness, sir.

The Court: Before Mr. Heinen leaves, 609 and 806 will be admitted.

(Government's Exhibits 609 and 806 for identification received in evidence.)

The Court: Now you may swear the witness, Mr. Clerk.

W. K. NEUMAN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. In Mamaroneck, New York.

Q. And you are presently employed by Continental Can?

A. Yes, sir.

Q. How long have you been employed by the company?

A. A little more than 20 years.

Q. In the period 1948 to 1952 what positions did you hold with the company?

[fol. 1796] A. In most of that time I was products sales manager and for the latter part of 1952 director of products sales in the Metal Division.

Q. When you held that position did you or did people under your supervision compile statistics which compared the cost of cans with glass containers?

A. Yes, sir.

Q. What other duties and responsibilities did you have?

A. Essentially it was a matter of disseminating information to our field sales force.

Q. Sir, how long had you been director of products sales?

A. One year.

Q. And you were responsible for disseminating material to the sales force?

A. Yes.

Q. What were your duties and responsibilities as director of products sales?

A. Supervising the products sales managers.

Q. And what did that involve, what did the products sales manager do?

A. The products sales managers were responsible for disseminating information to the field sales force.

[fol. 1797] Q. Sir, you had been manager of sales for the Metal Division of Continental Can?

A. Yes.

Q. When was that?

A. That was from January 1953 through January of 1956.

Q. And could you tell us, sir, what your duties and responsibilities have been in that position?

A. As general manager of sales on a staff basis to advise the executive head of the Metal Division on sales matters.

Q. Since 1956 what was your position with the company?

A. Manager of new products for the Metal Division.

Q. And you hold that position currently?

A. Yes, sir.

Q. What are your duties and responsibilities in that position?

A. Essentially the coordination of technical developments and subsequent commercialization of new products.

Q. Sir, I show you page 7 of Government's Exhibit 401 for identification and ask you if you recognize this [fol. 1798] page.

A. I don't recall it specifically. I see my name down here as having provided the information. I don't recall it specifically.

Q. But it is your testimony that you made studies of that type at that time?

A. Collecting information of that type.

Mr. Greenberg: Your Honor, the witness who apparently compiled all of this material, Mr. Walker, will testify tomorrow, and, frankly, I am just wondering whether I should offer this page or wait until Mr. Walker testifies.

The Court: It seems to me that the thing to do is to establish what you want to about this page and then when Mr. Walker testifies tomorrow offer the whole document.

Mr. Greenberg: Very well, I have no further documents with this witness.

Cross-examination

By Mr. Hughes:

Q. Mr. Neuman, can you tell me the source from which you derived the material on page 7 of Exhibit 401?

A. Well, I cannot precisely because I do not recall that specific instance. Normally I would obtain information of that type from our field sales force.

[fols. 1799-1847] Q. And that is the best you can do for us on that subject?

A. Yes.

Mr. Hughes: That is all.

The Court: All right.

Next document.

Mr. McManus: That is all for this witness.

The Court: That is the only document you have?

Mr. Greenberg: I would like to advise your Honor that the Government has not shown the witness documents which he allegedly received copies of because we have a stipulation—

The Court: All right, then that is not necessary.

Mr. Greenberg: And we have identified what his position was at that time.

The Court: I guess that disposes of you, Mr. Neuman, rather rapidly.

The Witness: Thank you.

(Witness excused.)

[fol. 1848] T. L. SANDERS, called as a witness in behalf of the Government, being first duly sworn, testified as follows: §

Direct examination.

By Mr. McManus:

Q. Mr. Sanders, by whom are you presently employed?

A. Eugene Dietzgen & Company.

Q. Were you at one time employed by Continental Can Company?

A. I was.

Q. And in what capacity?

A. Supervisor of metal container analysis.

Q. And for what period of time were you employed in that capacity?

A. October 1953 to April 1956.

Q. And who was your immediate superior?

A. At the time I left it was Mr. Dana Hill.

Q. Who is Mr. C. H. Buckley?

A. Mr. Buckley was the product manager of carbonated [fol. 1849] beverage containers.

Q. I show you Government's Exhibit 610, Mr. Sanders. Is that your signature?

A. It is.

Q. Do you recall preparing this document?

A. I recall signing it.

The Court: Am I wrong, didn't we go into 609 and 610 yesterday?

Mr. McManus: Not 610.

The Court: Was it 608 and 609?

Mr. McManus: I believe it was 608 and 609.

The Court: All right.

Q. Do you know the position of the first two men on the list under "cc" here?

A. Yes, I do.

Q. What was Mr. Fogarty's position?

A. If I recall correctly, at that time Mr. Fogarty was the vice-president of the Metal Can Division.

Q. And Mr. Wojtul, what was his position?

A. He was vice-president for sales.

Q. Was it under your direction that this survey of soft drink purchases in Los Angeles was made?

A. I am sorry, would you say that again?

Q. Was it under your direction that the survey of soft [fol. 1850] drink purchases, the study, was made?

A. No, it was not.

Q. How did it come to you, Mr. Sanders?

A. It came to me pretty much substantially prepared in rough final form just for my supervisory reading and editing.

Q. Was this attachment to 610 written by you and prepared by you?

A. The covering memorandum?

Q. No, the attachment?

A. No, it was not.

Mr. McManus: In that case, your Honor, the Government offers the covering letter of Exhibit 610 only, and we offer

it to show the awareness of Continental Can of competition between cans and glass in the Los Angeles market for soft drinks.

The Court: Is there any objection to the first two pages of 610?

Mr. Johnson: It is not offered for any other purpose?

The Court: No.

Mr. Johnson: No objection.

The Court: Do you want to ask any questions about it while the witness is on the stand?

[fol. 1851] Mr. Johnson: One moment, your Honor.

(Pause.)

Mr. Johnson: No questions.

The Court: All right, thank you, Mr. Sanders.

(Witnessed excused.)

The Court: 610 will be received.

(Government's Exhibit 610 for identification received in evidence.)

Mr. McManus: The Government calls R. A. Larson.

RALPH A. LARSON, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Larson, by whom are you presently employed?

A. By Continental Can Company.

Q. And for how long a period have you been employed by that company?

A. Since 1936.

Q. And what have been your duties in the last ten years?

A. I was employed in the Metal Division Research Department until 1953, and then from 1953 to 1954 in the Metal Division Sales Department, and from 1954 to the present time in the sales department.

Q. Would you know whether on July 15, 1953, you had been in sales or research?

A. Sales.

Q. I show you Government's Exhibit 417, Mr. Larson, and ask you whether "R. A. L." are your initials?

A. Yes, sir.

The Court: Where does that appear?

Mr. McManus: Excuse me, your Honor. That is on page 5, at the bottom of the page.

The Court: Yes.

Q. Would you take a look at this and tell me if you are familiar with this document?

A. Yes.

Q. Did you prepare that document?

A. Yes, sir.

Q. And what distribution did you give to that document?

Mr. Johnson: I did not hear that.

The Court: Both you and the witness try to keep your voices up so that these gentlemen can hear you.

[fol. 1853] Mr. McManus: Yes, your Honor.

A. I don't recall what the distribution of this was.

Q. Do you recall if you did distribute it at least through the organization?

A. Well, certainly to my superior.

Q. Who was your superior at that time?

A. Mr. Neuman.

The Court: And what was his capacity?

The Witness: He was the general manager of sales, Metal Division.

Q. Have you studied the basic material here about white enamel lining of cans?

A. I have made no study of it, no.

The Court: What did you do in preparing this paper? How did you go about preparing it?

The Witness: This, I would say, is the summary of information which I had gathered from a large number of sources, mostly through discussions.

The Court: Let us take white enamel lining of cans, where would you have gotten that information from?

The Witness: This I am afraid was a conjecture on my part.

[fol. 1854] By Mr. McManus:

Q. Take B, where would you get that type of information from?

A. With reference to the glass jars, this would have been as a result of discussions with people who had received these reactions from customers, I suppose.

Q. Would that discussion be within or without Continental Can?

A. Mine would be strictly within Continental.

Q. And would that be true with paragraph D?

A. Yes.

Q. And would that also be true with the rest of this document or did you make these studies yourself?

A. The are accumulations. These are my interpretations of information from a number of sources.

The Court: Can you hear, Mr. Johnson?

Mr. Johnson: It is very difficult back here, your Honor.

Mr. McManus: I am sorry, I will lift my head a little bit.

Q. Do you know why you made this document or who asked you to make this document?

A. No.

[fol. 1855] Q. But you do recall that you made it and sent it on to your superior?

A. Yes.

The Court: Was the document prepared in the course of the duties which you were then performing for Continental Can?

The Witness: Yes, sir.

The Court: And in the course of those duties you passed the document on to your superior, did you?

The Witness: Yes, sir.

The Court: You do not know what use your superior made of it?

The Witness: No, sir.

The Court: Do you know if it went to any other person besides your superior?

The Witness: I don't know.

The Court: You don't know?

The Witness: No, I don't know.

The Court: All right.

Mr. McManus: Your Honor, we are going to offer Government's Exhibit 417, but while I am here I would like to ask the witness if he also prepared 417-A, if I may.
[fol. 1856] The Court: Yes, you may.

By Mr. McManus:

Q. Would you look at 417-A and see if it was prepared by you?

A. No, sir.

Q. Have you ever seen this document before?

A. I don't recall this page.

Q. Would you take a look at the document and would you tell me if you are familiar with it?

A. I have seen something like this.

Q. What group were you with at the time you made the other document, 417?

A. With the sales group.

Q. And would this sales group have made this document or would this have been the type of document that your sales group would have made?

A. That I would not know.

Q. You say that you recall you might have seen this?

A. I might have.

Q. Do you have any idea as to who would have prepared this in your company?

A. I have an idea—I don't recollect, I really don't.

[fol. 1857] Q. I am just asking you, do you know?

A. No, I don't.

Mr. McManus: Your Honor, the Government offers at this time Government's Exhibit 417 only.

The Court: All right. You better state the purpose of it before Mr. Johnson examines on it.

Mr. McManus: Your Honor, the Government offers this document to show that Continental Can was very much concerned with staying in or getting back into the market for

baby foods, and also to show the competition between cans and glass for the baby food market.

Mr. Johnson: Well, your Honor, I take it that it is understood that Mr. McManus' statement as to his purpose for offering it—

The Court: I understand. He said what the purpose was, but it does not necessarily follow from the statement that he made accomplishes the purpose or does not accomplish the purpose.

Cross-examination.

By Mr. Johnson:

Q. Mr. Larson, did I understand you to say that you did not recall the sources from which you got the information to put in here, that is, Exhibit 417?

A. Not the exact sources.

[fol. 1858] Q. And you were speculating when you said that it might have come from discussions with others in the company?

A. Yes.

Q. You assumed that simply because you got the information from some place but you don't know now where you got it?

A. Not specifically.

The Court: Mr. Larson, do you recall whether in the preparation of this document you engaged in discussions with your colleagues in the company with respect to various aspects of this subject matter?

The Witness: Yes.

The Court: You did?

The Witness: Yes.

The Court: And I take it that you also did some reading?

The Witness: Yes.

The Court: You read material that was available on this subject?

The Witness: Yes.

The Court: Presumably from files of Continental Can, is that right, or from trade journals or from such other sources?

[fol. 1859] The Witness: Certainly.

By Mr. Johnson:

Q. Did you discuss this document with your superior?

A. I believe—I would assume that I did at this time.

Q. You assume you did but you don't know now, is that correct?

A. I don't recall a definite specific discussion.

Q. Do you recall any specific discussion with respect to this document?

A. Not specifically.

Q. Do you recall how much time you spent on this document?

A. Not accurately, no, sir.

The Court: Can you approximate the time you spent on it?

The Witness: Well, I imagine the writing would have been—

The Court: In terms of hours, the basic study, if you want to call it that, or research which you did in order to obtain the information that you have put in there, how long would that have taken?

The Witness: It would have represented information [fol. 1860] gathered over a period of months.

The Court: Not a continuous period of months.

The Witness: No.

The Court: But sporadically over a period of months?

The Witness: Yes, sporadically.

By Mr. Johnson:

Q. Would you regard this as a major project?

A. No, sir.

Q. At the time that you prepared this, Mr. Larson, were you an officer or director of the Continental Can Company?

A. No, sir.

Q. Were you responsible for policy determinations?

A. No, sir.

Q. Do you know what use was made of this document?

A. No, sir.

Q. Do you know whether Continental Can ever made lithographed baby food cans?

The Court: Ever made what?

Mr. Johnson: Lithographed baby food cans.

The Court: Somebody tell me what that means.

Q. Will you tell his Honor what lithographed baby food [fol. 1861] cans means that is referred to on this page?

The Court: Oh, this merely has to do with the labeling of it?

The Witness: The printing.

The Court: The printing, I see. In other words, lithographing directly on the can rather than pasted on or a wrap-around label?

The Witness: Yes, sir.

By Mr. Johnson:

Q. Do you recall my question?

A. Yes. I just don't know that I have ever seen one.

Q. Do you know whether Continental Can ever used a Trutite closure on baby food cans?

A. No, sir.

Q. Did Continental ever use conoseal closures on baby food cans?

A. No, sir.

Q. Did it ever use screw cap closures for baby food cans?

A. No, sir.

Mr. Johnson: I object to this document, your Honor.

The Court: Overruled.

[fol. 1862] (Government's Exhibit 417 for identification received in evidence.)

The Court: Is there anything further from Mr. Larson?

Mr. McManus: No, sir.

The Court: Thank you, Mr. Larson, you may step down.

(Witnessed excused.)

The Court: Next witness.

Mr. Greenberg: Your Honor, the Government calls Mr. Whittier to the stand.

ALLEN L. WHITTIER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Merrick, New York.

Q. Are you employed by Continental Can at the present time?

A. I am.

Q. How long have you been employed by Continental Can?

A. 25 years.

[fol. 1863] Q. Will you tell us in what positions?

A. It was a long haul, but generally I have been with the marketing or commercial research.

Mr. Johnson: I have been informed that this witness was going to be examined with respect to documents 589 to 599. 592 to 597 are already in evidence. If the purpose of calling this witness is to introduce the remaining documents which are of a similar nature, I have no objection to them.

The Court: Well, that seems to simplify that.

What documents do you offer?

Mr. Greenberg: I thought we informed a representative of Continental Can, and if we had not, we now inform them, that we are now going to offer G-589, 590, 591, 592, 598 and 599 only.

The Court: Isn't 592 in evidence?

Mr. Greenberg: Yes, it is in evidence.

The Court: So that is out.

Is 591 in evidence?

Mr. Greenberg: No, sir. 592 and 593 are in evidence.

The Court: All right. 598 is not in evidence?

[fol. 1864] Mr. Greenberg: That is correct, your Honor.

The Court: Let me ask, just for the purpose of clarification here, is there presently any objection to 589, Mr. Johnson?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 589 for identification received in evidence.)

The Court: Is there any objection as to 590?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 590 for identification received in evidence.)

The Court: As to 591?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 591 for identification received in evidence.)

The Court: As to 598?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 598 for identification received in [fol. 1865] evidence.)

The Court: As to 599?

Mr. Johnson: No.

The Court: That may be admitted.

(Government's Exhibit 599 for identification received in evidence.)

The Court: All right, thank you, Mr. Whittier.

Mr. McManus: May I just ask one of two questions dealing with what positions he held at the time these documents were executed?

The Court: All right, I will give you two questions.

Mr. Greenberg: All right.

By Mr. Greenberg:

Q. In 1947 and 1948 what position or positions, if more than one, did you hold with Continental Can?

A. I can't recall the title but it had to do with commercial research, however.

Q. The second question is, can you recall your duties and responsibilities in the positions you held in 1947 and 1948?

A. Specifically, no, they were varied.

Q. You can't recall?

A. No.

[folo. 1866-1867] The Court: Thank you, Mr. Whittier.

Mr. Johnson: May I ask—

The Court: I am sorry, do you have any objection to these exhibits?

Mr. Johnson: While I have no objection to these documents, we would like to have a statement as to purpose for which they are being offered.

The Court: Yes, I think that is a fair request.

Mr. Greenberg: Your Honor, these documents are grouped together into a series, and the series involve reports on beer packed in glass containers. There is a long line of distribution of these documents to officers and other executive personnel of the company, who received this material.

Succinctly, your Honor, these documents show the awareness of competition between cans and glass containers and a desire to keep abreast of the market.

The Court: All right.

Next witness.

(Witness excused.)

[fol. 1868] D. H. WALKER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: Before we proceed, what documents are you going to question Mr. Walker about?

Mr. McManus: 429, your Honor, and—

The Court: Are any of these in evidence?

Mr. McManus: I checked with the clerk and I believe they are not, your Honor.

The Court: Let me first ask, before you go into this, is there any objection to 429?

Mr. Hughes: Yes, sir.

The Court: 440-A?

Mr. Hughes: Yes.

The Court: 440?

Mr. Hughes: Yes.
 [fol. 1869] The Court: 441?
 Mr. Hughes: Yes.
 The Court: 600-B?
 Mr. Hughes: Yes, your Honor.
 The Court: 601?
 Mr. Hughes: Yes, your Honor.
 The Court: 602?
 Mr. Hughes: Yes, sir.
 The Court: 604?
 Mr. Hughes: Yes, sir.
 The Court: And 605?
 Mr. Hughes: Yes, sir.
 The Court: All right, go ahead.

Direct examination.

By Mr. McManus:

Q. What is your present employment, Mr. Walker?
 A. I am in the management consulting field with Cresap, McCormack & Paget.
 Q. How long have you been employed in the management consulting field?
 A. Six years.
 Q. And prior to that by whom were you employed?
 A. By Continental Can.
 Q. What year did you terminate your employment with Continental Can?
 [fol. 1870] A. In the year 1954.
 Q. How long were you employed by Continental Can?
 A. From 1948 to 1954.
 Q. Did you have different jobs over that period of time or did you just have one job?
 A. The entire time was in the commercial research department, and from 1950 to 1954 I was manager of that department.
 Q. Prior to 1950, from 1948 to 1950, what was your position?
 A. I was a supervisor in that department.
 Q. And to whom did you report as head of the commercial research department?
 A. To different people at different times.

Q. And to what group would you report?

A. It was a part of the sales department and under the general direction of the vice-president for sales, but there were intermediate superiors at various times.

Q. And during the whole time as head of the commercial research department was there one vice-president for sales or several?

A. No, there were several.

[fol. 1871] Q. I show you Government's Exhibit 429 and ask you if you recognize that document? Take a look at it.

A. Yes, I recognize it.

Q. Who prepared the letter? Is that your signature?

A. That is my signature. I believe I prepared the letter.

Q. And who did you send that to?

A. Mr. Mackelden.

Q. Who was Mr. Mackelden?

A. Mr. Mackelden at that time was the products sales manager for non-food metal cans.

Q. Could you identify these three gentlemen on the list here?

The Court: We have had Wojtul identified and Neuman identified—in fact, he has been on the stand. I think we have had Fisher identified several times, if I am not mistaken.

Q. Was the attachment here prepared—would you take a look at that and tell me, was it prepared by the commercial research department?

A. Yes, it was prepared by that department.

The Court: Under your supervision and direction?
[fol. 1872] The Witness. Under my direction, yes.

The Court: How big a staff did you have?

The Witness: I believe it was about 15 at that time.

The Court: How did you go about preparing this document? What did you do in preparation of it?

The Witness: Well, I did not prepare it.

The Court: What did your staff do under your direction and supervision, in substance?

The Witness: In substance, reviewed information available in our files, information available to personnel within the company, interviewed people in the company who knew,

containers, and reviewed trade literature, trade information.

The Court: So that as a result they prepared this document, is that right, and submitted it to you?

The Witness: That is correct.

The Court: And you reviewed it, I suppose?

The Witness: That is correct.

The Court: And then you prepared this memorandum and sent it to the list of people here?

The Witness: Yes, sir.

The Court: Is there anything further you want on this, Mr. McManus?

[fol. 1873] Mr. McManus: Your Honor, the Government offers document 429. We offer this for the truth of the matter contained therein.

The Court: Is that the only purpose, that you just offer it for the truth and you offer it for no other purpose?

Mr. McManus: Yes, sir.

The Court: All right, now you may examine, Mr. Hughes.

Cross-examination.

By Mr. Hughes:

Q. Mr. Walker, do you know whether this document had any circulation outside of the company?

A. No, I did not. I am fairly sure it did not go outside the company.

Q. Do you know whether it had any circulation beyond Mr. Mackelden and the three gentlemen named at the bottom of the transmitting letter?

A. No, I do not.

Q. You told us that you did not prepare the document yourself, is that correct?

A. I don't believe I did.

Q. Now, do you know whether any action of any kind was taken on this document?

[fol. 1874] A. No, I do not.

Q. Do you know what happened to the document after you transmitted it?

A. Only that it was read.

Q. And at that time were you an officer or director of the company?

A. No, I was not.

Q. Did you have the power to commit the company in any way?

A. No.

Q. Did you make policy for the company at that time?

A. No, I did not.

Q. At page III there is a reference to a recent consumer survey conducted by Lever Bros. Do you recall whether you ever saw that survey that is referred to at the bottom of that page?

A. No, I did not see it.

The Court: Where is that reference, Mr. Hughes?

Mr. Hughes: Page III, the last sentence on that page.

The Court: Yes, I see.

Q. And on what would be page IV you observed the concluding paragraph on that page?

[fol. 1875] A. Yes.

Q. Can you tell us whether the research department ever investigated the possibilities therein alluded to?

A. No, I do not know.

Q. You don't know whether they did anything about that?

A. No, I don't know whether they did or not.

Q. And the language of that recommendation, that was the language of somebody other than yourself, you did not write that paragraph is that correct?

A. I am almost sure I didn't.

Q. Who was Jack Carter?

A. Mr. Carter was a market research analyst in the commercial research department.

Q. Do you see the tables and figures on page III?

A. Yes.

Q. Did you prepare them?

A. No, I did not.

Q. Do you know who did prepare them?

A. I would assume Mr. Carter did.

Q. And there is an indicated source of the figures as the Association of American Soap and Glycerin Producers, Inc., and the Chemical and Engineering News.

[fol. 1876] Do you see that?

A. Yes.

Q. Who was this Association, American Soap & Glycerin Producers? Do you know anything about them?

A. No, I do not personally.

Q. And you don't know what the data or material was in that Association's publication that Mr. Carter drew on to reach these conclusions, is that right?

A. That is correct.

Q. And similarly you don't about the Chemical and Engineering News of September 1, 1952?

A. No.

Q. Whether he drew on that?

A. No.

Q. Did you prepare the chart on page III?

A. No, I did not.

The Court: Just ask him the general question, did he prepare any of the charts.

Q. Did you prepare any of the charts or any of the figures?

A. No.

[fol. 1877] Mr. Hughes: Your Honor, I object to it as irrelevant and immaterial, and on the ground that no proper foundation has been laid for its reception.

The Court: Overruled.

Mr. Hughes: Now, your Honor, is this being taken for the truth of the matters?

The Court: It is being taken for all purposes.

(Government's Exhibit 429 for identification received in evidence.)

Mr. McManus: We are now referring, your Honor, to 440-A.

The Court: All right.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 440-A; is this your signature on page 3?

A. Yes, it is.

Q. And in January of 1952, what were your duties at that time?

A. I was manager of the commercial research department.

Q. You were manager at that time?

A. Yes.

Q. And in this case you were reporting—you made this [fol. 1878] report to Mr. Dukehart?

A. Yes.

Q. And what was his position at that time?

A. He is product sales manager for beer cans.

Q. And the document here in the lead sentence says that "At Mr. Dake's request I am submitting a summary."

A. Yes.

Q. Who was Mr. Dake?

A. Mr. Dake was my superior.

Q. And what position did he hold?

A. I believe his title was director of sales planning.

The Court: Director of what?

The Witness: Director of sales planning.

The Court: Try and keep your voice up, Mr. Walker. I am sure these gentlemen can scarcely hear you.

The Witness: Yes.

Q. And did he normally make requests of this type on your organization?

A. Yes, he normally did.

Q. And it was normal for you to make these reports to Mr. Dukehart; is that correct?

[fol. 1879] A. Yes.

The Court: I think you better ask him not if it is normal, but did he make these reports in the course of his duties, in the regular course of his duties.

Q. Did you make these reports in the regular course of your duties?

A. Yes, I did.

Q. And do you recall this particular report? If you would like to look at it?

A. Well, I don't recall preparing it, specifically.

The Court: But do you recognize it as a report you prepared?

The Witness: I recognize it, yes.

The Court: All right.

Mr. McManus: Your Honor, we offer this document for all purposes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, on page 2, in the middle paragraph, this document refers to interviews with retailers. Did you personally conduct those interviews?

A. No, I believe not.

Q. Do you know who did?

[fol. 1880] A. Not specifically.

Q. Now, at the time when this document was prepared, were there some sort of restrictions in effect on the use of metal?

A. What was the date on that document?

Q. January 29, 1952.

The Court: Well, now, somebody let the witness have the document before him.

Mr. Hughes: Your Honor, if I may stay here?

The Court: Yes, that is all right. In each case, please, when the witness is testifying, let the witness have the document so that he knows what he is talking about.

A. Yes, I believe there were use restrictions on metal, for metal cans.

The Court: What was this, the Korean War?

The Witness: Yes.

Q. And at the time when it was prepared, were you—when I say “you,” I mean you and the company—looking forward to the time when these restrictions were going to be lifted?

A. Yes.

Q. And was the purpose of this a prognostication of what the requirements would be for metal containers for [fol. 1881] beer once the restrictions had been lifted?

A. I would say that is the basic purpose, yes.

Q. Now, would you say in your experience, Mr. Walker, that the customer has a tendency to confuse the one-way bottle and the returnable bottle?

A. Yes, in my experience, that is true.

Mr. Hughes: Your Honor, the same objection.

The Court: Yes, overruled.

Mr. Hughes: Is it being taken for all purposes?

The Court: Yes. As I understand it, of course, it is largely expressions of opinion.

Mr. Hughes: Yes, sir.

The Court: And expressions of opinion will not be taken as statements of fact, necessarily.

(Government's Exhibit 440-A for identification received in evidence.)

Direct examination continued.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 440, which immediately followed 440-A in our book.

A. I believe I recognize it.

Q. And your position was the same as you indicated [fol. 1882] when answering questions to 440-A?

A. Yes, that is right.

Q. And Mr. Dukehart had the same position, also?

A. Yes, he did.

Q. Now, did Mr. Dake ask you to make this document?

A. This was probably requested by Mr. Dukehart.

Q. Probably requested by Mr. Dukehart.

A. Yes.

Q. Will you take a look at the document and see if you can recall it, generally?

A. Yes, I recall the subject matter.

By the Court:

Q. Let me ask one question: do you know whatever happened to the proposed beer for women that is referred to on one of the pages here?

A. It never did establish a place on the market, to my knowledge.

Q. And could you tell me what was the difference between the proposed beer for women and the beer that one ordinarily obtained?

A. I think that was a marketing image.

[fol. 1883] Q. This was a gimmick?

A. This was a gimmick.

Mr. McManus: If we could go off the record a second?

(Discussion off the record.)

By Mr. McManus:

Q. Now, was this document prepared in the regular course of your duties?

A. Yes, it was.

Mr. McManus: Your Honor, the Government offers Government's Exhibit 440 for all purposes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this wasn't prepared for circulation outside the company, was it?

A. No, it was not.

Q. And so far as you know, it didn't circulate outside the company?

A. As far as I know.

Q. The initials GB appear on the letter; do you know who GB is?

A. Yes, that is George Bliss.

Q. Does that mean that he wrote the first page of this document?

[fol. 1884] A. Yes.

Q. And that is your typed signature; is that right?

A. That is right.

Q. Now, at the time when this document was written, had American Can come out with an 8-ounce can?

A. I believe they had.

Q. And actually, this document was stimulated by the fact that they had come out with that can and you were considering the pros and cons of cans for beer in sizes less than 12 ounces; is that correct?

A. Yes, that is correct.

Q. And it was really to that problem that you were directing your attention when this memorandum was prepared?

A. Yes.

Q. And the report actually was not prepared by you, was it?

A. No, it was not.

Q. Do you know by whom it was prepared?

A. Well, I believe it was prepared by George Bliss, since his initials appear.

Q. And in your experience did the 12-ounce can for beer, less than 12-ounce can for beer, ever get any- [fol. 1885] where?

A. Never amounted to anything.

The Court: Just let me understand: the ordinary beer can—I was going to say that I would buy—let's say that one would buy in the store, one would buy a can of beer or come back with several cans of beer, what is that, a 12-ounce can?

Mr. Hughes: That is a 12-ounce can.

The Court: And the 8-ounce can would be smaller than that.

Mr. Hughes: Yes, sir.

By Mr. Hughes:

Q. So far as you know, has Continental ever put out an 8-ounce can for beer?

The Court: In other words, that would be only two-thirds of what would be in a 12-ounce can.

All right.

Q. Do you have my question?

A. Not to my knowledge.

Mr. Hughes: I object to it, your Honor.

The Court: Mr. McManus, I wonder if you could tell me what purpose this is expected to serve?

Mr. McManus: Your Honor, on page 3 it indicates that the smaller bottle is marketed in glass, and it is our [fol. 1886] position that the purpose of the smaller can was to compete with the smaller glass bottle.

The Court: All right, the objection is overruled.

(Government's Exhibit 440 for identification received in evidence.)

Mr. Hughes: Your Honor, is this being taken for the alleged facts that are in it?

The Court: I think so. It is not being taken for Mr. McManus's statement. It is being taken for whatever it says in here.

Mr. Hughes: Yes.

The Court: In other words, I will give you my view, frankly, that unless you can show me that the commercial research department, under the various gentlemen you have seen here, which was established by Continental Can for the purpose of assembling data for what use Continental Can chose to make of it, was incompetent or unable to perform its function given to it by the company, I am going to admit without complete generalization, in general, I am going to admit anything prepared as reports by the commercial research department.

[fol. 1887] Mr. Hughes: Well, your Honor, of course we are not conceding that our research department was incompetent, nor do we ever expect to attempt to prove that. But I think it is evident that from the examination of these witnesses, they do get their information that goes into these documents from many, many hearsay—

The Court: I have no doubt.

Mr. Hughes: —many, many hearsay sources.

The Court: That might well be.

Mr. Hughes: And when they spoke about the Goebel Brewing Company being something in the nature of a hybrid, I would assume that that is not a fact that we have to come to grips with in this case.

The Court: I don't know what that means, anyway.

Mr. Hughes: I have some doubt as to what it means.

But running through all these documents are these factual statements, many of which, as I say, are sometimes triple or quadruple hearsay, and of course there are many of these studies. They range—

The Court: Well, any study made by a group like this is bound to be based on a great deal of hearsay, and I [fol. 1888] don't think that is necessarily a vice, but I think plainly the evidence has to be viewed in the light of the sources and evaluated in the light of the sources.

Mr. Hughes: Of course, many of these surveys, your Honor, I think it is apparent, are quite—studies—are quite casual in nature. Some of them, obviously, had more effort put into them than others.

The Court: That goes to the question of their weight, it seems to me.

All right, now, what is the next document?

Mr. McManus: 441, your Honor.

The Court: Now, is there any basic difference between 441 and the previous exhibit, except in terms of general subject matter?

Mr. McManus: No, your Honor.

The Court: Well, take a look at 441, Mr. Walker; was that prepared by your department, under your supervision, in the same manner as the other one?

The Witness: Yes.

The Court: The previous exhibit?

The Witness: Yes.

The Court: All right, offer it, Mr. McManus.

Mr. McManus: The Government offers G-441 for all [fol. 1889] purposes.

The Court: You want to question about it, Mr. Hughes?

Mr. Hughes: A few questions, yes.

By Mr. Hughes:

Q. This wasn't prepared for circulation outside of the company, was it?

A. No, it was not.

The Court: Would the questions that Mr. Hughes asked you with respect to 440, the general questions Mr. Hughes asked you with regard to the circulation and matters of that nature, apply also to 441?

The Witness: Yes, as I remember it.

Q. Now this document 441 refers to a study of the beer situation in Baltimore; do you recall that?

A. Yes.

Q. And who was it that participated in that effort?

A. I can't recall.

Q. Do you recall whether you personally participated in it?

A. I believe I did.

Q. Anybody else?

[fol. 1890] A. I am sure I was assisted in it, but I don't recall who it was.

Q. You don't recall whom you interviewed; is that correct?

A. Not precisely.

Q. And do you recall whether you were assisted by an analyst?

A. It would have been an analyst from the commercial research department.

Q. And do you know whom he called on?

A. No.

Q. Did you preserve any working notes of your visits?

A. No.

Q. Now, would the data on page 4, would that have been data that was prepared by you, or would that have been prepared by the analyst, the data on page 4?

A. It is probably prepared by the analyst.

Q. You don't recall having prepared it?

A. No, I do not.

Q. And you don't know where he got his information from?

A. No.

[fol. 1891] Q. Would that be also true of the data on pages 3 and 5?

A. It is true of page 3 and true of page 5.

Q. Now, in your experience, Mr. Walker, do brewers offer all three types of container for beer, that is to say, cans, returnable bottles and one-way bottles?

A. Yes, I believe most leading brands are offered in all three.

Q. And he leaves it up to the consumer to take his or her pick; is that right?

A. Consumer has the choice.

Mr. Hughes: I object to the document.

The Court: Overruled.

(Government's Exhibit 441 for identification received in evidence.)

The Court: Now, we have a number of other documents here. I think we had better rise for lunch at this point.

Mr. McManus: Yes, sir.

The Court: Before we do, however, let me ask you this:

By the Court:

Q. When you were manager of the commercial research [fol. 1892] department, Mr. Walker, what did your staff of, generally, what sort of people? What was their training and background for the job that they did, and what was your job?

A. The staff comprised about half—about half, I would say, were trained market research analysts. These were people who had some skills, some education, to qualify them to gather and assess and evaluate market information. There were others in the department. There was a chartist; there were statistical analysts and typing or stenographic help. I believe there were about from six to eight analysts, each of whom was engaged in one or more research projects at any one time.

In my capacity I was directing the efforts of the department and reviewing the work.

Q. What had been your general experience in that field before you took on that assignment, Mr. Walker?

A. I had been a market research analyst.

Q. What does it take to make a market research analyst?

A. That is an interesting question. I would say I could answer it this way, in kind of specifications which were established in hiring people.

[fol. 1893] Q. Yes, that is what I want to know.

A. We prefer at least a college education, principally in graduate study in marketing, statistics, and similar kind of subjects. Also some practical business experience. These are the raw materials that can make a good market analyst.

Q. And your market analysts in your department, commercial research department, I take it, met these specifications that you spoke of, or the job qualifications that you have just been talking about?

A. I would say they did.

The Court: Very good.

Now, we will take a recess until five minutes after two, gentlemen.

(Recess to 2:05 p.m.)

[fol. 1894]

AFTERNOON SESSION

The Court: Mr. Walker, will you resume the stand.

D. H. WALKER, resumed.

Mr. McManus: The document we will refer to, your Honor, is 600-B.

Direct examination continued.

By Mr. McManus:

Q. Mr. Walker, I show you Government's Exhibit 600-B; is that your signature on page 3?

A. Yes, it is.

Q. And do you recognize that document?

A. Yes, I do.

Q. And was this prepared in the regular course of your employment?

A. Yes, it was.

Q. And it was distributed to Mr. Dukehart?

A. It was distributed to Mr. Dukehart.

Mr. McManus: The Government offers 600-B, your Honor, for all purposes.

Mr. Hughes: May I ask some questions on it?

The Court: Yes.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this received no circulation outside the company, did it?

[fol. 1895] A. No, it did not.

Q. Do you regard the metal can for soft drinks as a supplemental container which would enlarge the overall soft drink market?

A. I would think by and large it would and has. You have a larger variety of packages to satisfy a larger part of the market.

Q. In your view, will the can ever replace the glass container in the marketing of soft drinks?

A. I certainly don't think so.

Q. And in 1953 and 1954, thereabouts, when this memorandum was prepared, will you tell us about what per cent of the total packaged soft drinks moved in metal cans?

A. Well, it was a very small percentage—probably 1 per cent or less.

Q. Now on page 1 of this document, you refer to the total bottled soft drink carbonated beverage consumption in the United States as about 23 to 25 million bottles, all sizes; do you recall the source of that information?

A. No, I do not.

Q. And on page 2, you make certain estimates. Do you see the estimates of penetration on page 2?

[fol. 1896] A. Yes.

Q. Is that strictly a judgment figure?

A. Yes, strictly.

Q. And you left the company when?

A. In 1954, in August.

Mr. Hughes: August of 1954.

Same objection, your Honor.

The Court: Overruled.

Mr. Hughes: Was this offered for all purposes?

Mr. McManus: It was, your Honor.

The Court: I understood so.

Mr. Hughes: All right.

The Court: Objection overruled.

Mr. McManus: Your Honor, may I ask the witness just two questions?

The Court: Yes.

By Mr. McManus:

Q. You made the statement that you believed that the soft drink can would enlarge the market for soft drinks; upon what do you base that conclusion?

A. It is just an opinion based on—

Q. Personal opinion?

A. —personal opinion.

[fol. 1897] Q. Would your answer be the same if I asked you about your statement that the metal can would not

replace, totally replace, the glass container? Is that your personal opinion, also?

A. It is personal opinion based on a long period of study.

Mr. McManus: That is all I have, your Honor, on that.

Mr. Hughes: No further questions on that exhibit.

The Court: All right, thank you, Mr. Hughes.

(Government's Exhibit 600-B for identification received in evidence.)

Direct examination continued.

By Mr. McManus:

Q. I show you Government's Exhibit 601, Mr. Walker.

A. This one?

Q. Yes. Is that your signature?

A. Yes.

The Court: Is that document prepared along the same lines as the other documents previously offered?

The Witness: Yes, substantially.

The Court: For the same general purpose?

[fol. 1898] The Witness: Same purpose.

The Court: By your division?

The Witness: That's right.

The Court: And distributed as indicated thereon?

The Witness: Right.

The Court: All right.

Mr. McManus: Government offers 601 for all purposes.

By Mr. Hughes:

Q. Mr. Walker, you see that this document purports to record a call made on the Ted Bates Advertising Agency on the preceding day.

A. Yes.

Q. Was that a call that you made?

A. It was.

Q. And who was the Ted Bates Advertising Agency?

A. They were the agency employed by Cantrell & Cochran.

Q. And who is Cantrell & Cochran?

A. Cantrell & Cochran was a new entry in the soft drink field, and a customer of Continental Can for cans.

Q. And the Ted Bates Advertising Agency at that time [fol. 1899] was not under any contract or retainer by Continental Can?

A. No relationship to Continental Can.

Q. And you called and asked them for certain information?

A. That is right.

Q. They gave it to you, and you put it into memorandum form; is that correct?

A. That is right.

Mr. Hughes: I object to it as irrelevant and immaterial; hearsay.

The Court: Overruled.

Mr. Hughes: Could I have the purpose of this offer?

Mr. McManus: It was offered for all purposes, your Honor.

The Court: Well, I don't quite think you can take figures—no, I will admit it for all purposes.

Mr. Hughes: Very well, your Honor.

(Government's Exhibit 601 for identification received in evidence.)

By Mr. McManus:

Q. I show you Government's Exhibit 604, Mr. Walker; [fol. 1900] is that your signature on page 1

A. Yes.

Q. And this was made either by you or by commercial research department in the regular course of your duties?

A. It was prepared in the department, in the normal course of our work.

The Court: This is 602?

Mr. McManus: 604, your Honor.

The Court: 604. You are not offering 602, I take it, at this point?

Mr. McManus: Excuse me, your Honor. I am sorry. I skipped 602, your Honor.

Could I go back to 602, if I may?

The Court: Yes.

[fol. 1901] Q. I show you Government's Exhibit 602, Mr. Walker. Is that your signature on page 2?

A. Yes, it is.

Q. And was it made in the regular course of the duties of the commercial research department?

A. That is right.

Q. And it was distributed as indicated?

A. Yes.

Mr. McManus: The Government offers G-602, your Honor, for all purposes.

The Court: All right.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Walker, this was not circulated outside of the company, so far as you know, was it?

A. No, it was not.

Q. You state in this document:

"The attached tabulations summarize the results of a quick survey of the dealers and consumers of Can-A-Pop soft drinks in Cheyenne, Wyoming."

Do you recall who made that quick survey, as you have described it?

A. As I recall, we commissioned the A. J. Wood market research organization to do the field survey [fol. 1902] work.

Q. And they did that and reported it to you?

A. They reported that to us.

Q. What appears on pages 3, 4 and 5 of this document are the summaries of you or of your department of what was reported to you?

A. That is right.

Q. And you have no personal knowledge as to how they conducted it?

A. No, no personal knowledge.

Q. And you say in this document:

"This brief survey was conducted at the request of you and Mr. Neuman in order to obtain very quickly

some measure of the response to Can-A-Pop beverages in flat-top cans. This could not be termed a scientific survey by any stretch of the imagination, and the results, although interesting and informative, cannot be considered a valid test of the acceptance by the consumer of a flat-top can for soft drinks."

Does that represent your judgment as to the kind of survey that was?

A. Yes, sir, it did.

[fol. 1903] Q. While we are at it, Can-A-Pop was the name of some corporation, was it not?

A. I believe it was, yes.

Q. They went into the business of marketing soft drinks in metal cans, isn't that right?

A. Yes.

Q. The idea being that they would use that as the only vehicle for marketing their soft drinks?

A. That is right.

Q. And what happened to the Can-A-Pop Corporation?

A. It is now extinct. I don't think it lasted longer than a year.

Mr. Hughes: I object to it, your Honor.

The Court: Overruled.

(Government's Exhibit 602 for identification received in evidence.)

Mr. McManus: The next document is 604, your Honor.

Q. As I asked you previously, Mr. Walker, is that your signature on page 1 of Government's Exhibit 604?

A. Yes.

Q. Was this document prepared by the commercial research department in the regular course of its business?
[fol. 1904] A. Yes, it was.

Q. And it was distributed as indicated there?

A. Yes.

Mr. McManus: The Government offers G-604, your Honor, for all purposes.

Preliminary examination.

By Mr. Hughes:

Q. This was not circulated outside of the company, so far as you know?

A. No, it was not.

Q. And this is a summary of somebody else's survey, is that correct?

A. Yes.

Q. Who made the survey?

A. The Hooper organization made a sampling.

Q. You did not participate in the survey?

A. No, I did not.

Q. Or any of your men?

A. No.

Q. So this simply records a summary of someone in your office of a survey made by somebody else, is that right?

A. That is right.

Mr. Hughes: I object to it.

The Court: Overruled.

[fol. 1905] Mr. Hughes: May we have the purpose of this?

The Court: Yes.

Mr. McManus: For all purposes, your Honor.

Mr. Hughes: This is received as an exhibit for all purposes?

The Court: Yes, received.

(Government's Exhibit 604 for identification received in evidence.)

By Mr. McManus:

Q. Now, I show you—

The Court: 605 is simply a continuation of this 604 business applied to other cities and for other periods, is it not?

Mr. Hughes: I would stipulate that if questioned this witness' testimony on direct and cross-examination would be the same.

The Court: And the same objection?

Mr. Hughes: The same objection, yes.

The Court: Same ruling.

(Government's Exhibit 605 for identification received in evidence.)

Mr. McManus: Your Honor, Mr. Walker testified that he was head of the commercial research department [fol. 1906] for the period 1948 to 1954. We have certain documents which we believe were prepared by that department during that period of time which are not signed by Mr. Walker, and we would like to inquire of Mr. Walker if they were prepared by him or under his supervision.

The Court: All right.

Mr. McManus: 402 will be the first one.

By Mr. McManus:

Q. I show you Government's Exhibit 402, entitled "The Market for Peanut Butter in Cans," and on page 7 that bears the notation, "Commercial Research Department, November 25, 1952."

A. Yes.

Q. Were you manager of the Commercial Research Department at that time?

A. I was.

Q. Do you recognize that document?

A. Yes, I do.

Q. Was that prepared by the Commercial Research Department?

A. Yes.

Q. In the regular course of its duties?

A. That is right.

[fol. 1907] Q. And do you know the distribution of that document?

A. No. If it is not indicated here I don't know what the distribution was.

Q. Do you know if it was sent to officials of the Continental Can Company?

A. I don't know for sure. I would be reasonably sure that it went to the products sales manager.

Q. This would be the type of thing that would go to the products sales manager?

A. Yes.

Mr. McManus: The Government offers 402 for all purposes.

Preliminary examination.

By Mr. Hughes:

Q. This was not circulated outside the company, so far as you know?

A. No, it was not.

Q. Do you recall anything about the circumstances of the preparation of this document?

A. No, I don't—it is too far back.

Q. This concludes on page 7 with certain recommendations.

Do you know whether those recommendations were in fact carried out?

[fol. 1908] A. No, I would have no way of knowing.

Mr. Hughes: I object to this on the same ground, your Honor.

The Court: Overruled.

(Government's Exhibit 402 for identification received in evidence.)

Mr. Hughes: Could I have the purpose?

Mr. McManus: For all purposes.

The Court: As you start with a new document let us make it a standard procedure that you state the purpose for which you are offering the document or expect to offer it.

Mr. McManus: Your Honor, this document was prepared by the Commercial Research Department and Mr. Walker is going to identify it. This is 407 and we would offer it for all purposes.

The Court: This is G-407 now?

Mr. McManus: Yes, sir.

The Court: What about 402, was that for all purposes?

Mr. McManus: Yes, sir.

The Court: All right, what about G-407 now?

Q. Mr. Walker, I show you Government's Exhibit [fol. 1909] G-407. Would you take a look at that and see if you recognize that document?

A. No, I do not.

The Court: As far as you know, you never saw it?

The Witness: I never saw it.

The Court: All right, next.

Mr. McManus: The next document, your Honor, is G-430.

Your Honor, I will withdraw my request to have him identify G-430.

The Court: All right.

Mr. McManus: Next is G-437.

The Court: I notice this is a very lengthy document. I would like to know what purpose this is being offered for. First let us see whether he has ever seen it or not.

By Mr. McManus:

Q. I show you Government's Exhibit G-437, which is identified at the bottom as being prepared by the Commercial Research Department, August 20, 1948 and revised on 10/1/48.

Are you familiar with that?

A. This was before my employment.

[fol. 1910] The Court: All right, next.

Mr. McManus: 439-A, your Honor.

Q. I show you Government's Exhibit G-439-A, Mr. Walker. Would you tell me if you recognize that document?

A. Well, I don't recognize it. I don't believe it was prepared in the Commercial Research Department. I don't recognize it.

The Court: All right, next.

Mr. McManus: Exhibit G-600, your Honor.

Q. Would you take a look at Government's Exhibit 600, Mr. Walker, and tell me if that was prepared either by you or in the Commercial Research Department?

A. No, it was not.

Mr. McManus: 603 will be the next document, your Honor.

Q. I show you 603, entitled "Survey of Soft Drink Purchases." Do you recognize that document?

A. I do.

Q. Was that prepared by the Commercial Research Department in the regular course of their duties?

A. Yes, it was. This is one of those series that we had before.

[fol. 1911] Mr. McManus: Your Honor, could I ask him about 606? They seem to be quite similar.

The Court: All right.

Q. I show you Government's Exhibit 606. Do you recognize that document?

A. I see the date September 1954 which is after my time.

Mr. McManus: Your Honor, the Government would offer 603 for all purposes as it has the previous surveys which are quite similar.

The Court: 603?

Mr. McManus: Yes. Would you rather I try to identify the next few or do you want me to go document by document?

The Court: It all depends. If they are part of a series, let us have them all.

Mr. McManus: Did you want to examine, Mr. Hughes?

Mr. Hughes: I have a few questions and I might as well put them now.

The Court: All right, I think so.

Preliminary examination.

By Mr. Hughes:

Q. That was not circulated outside the company, was it, this Exhibit 603?

[fol. 1912] A. No, it was not.

Q. And the survey itself was handled by C. E. Hooper Company, Inc., is that correct?

A. That is right.

Q. And this is a mere summary of what the C. E. Hooper Company reported?

A. Yes, it is a summary and interpretation of the results.

Q. And you or your department had nothing to do with conducting the survey itself?

A. No.

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 603 for identification received in evidence.)

Mr. McManus: The next document, your Honor, is G-621.

By Mr. McManus:

Q. I show you Government's Exhibit 621 entitled "Consumer and Dealer Plan for Promotion of Soft Drinks in Cans, Continental Can Company, December 1954."

Do you recognize that?

A. No, I don't. It was after my time.

Q. That was after your time?

[fol. 1913] A. Yes.

Mr. McManus: The last document, your Honor, is G-784.

Q. I show you Government's Exhibit G-784. Would you take a look at that and see if you recognize that document?

A. No, I don't recognize this.

Q. You don't recognize it?

A. I do not recognize it.

Mr. McManus: That is all we have with Mr. Walker.

The Court: Is there anything further from Mr. Walker?

Mr. Hughes: No further questions.

The Court: All right, Mr. Walker, you may step down, thank you.

(Witness excused.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Greenberg: Your Honor, the Government now makes reference to Government's Exhibit 785 through 788. It seems that these are documents—

The Court: Wait a minute. Let me get them. 785 through 788, yes.

Mr. Greenberg: These are documents which were sub-[fol. 1914] mitted to us either by the Willkie firm, Continental Can or the Hazel-Atlas Glass Company in response to letters by the Department of Justice.

The Government requests at this time a stipulation with respect to these documents to avoid the necessity of calling either lawyers connected with the firm or other officials.

The Court: You request a stipulation. What is the nature of the stipulation that you want?

Mr. Greenberg: We request a stipulation to the admissibility of these documents.

Mr. Handler: A stipulation as to what?

[fol. 1915] The Court: I presume that there is no objection to the admission in evidence of these documents?

Mr. Greenberg: That is correct, your Honor.

Mr. Handler: If your Honor please—

The Court: Sit down for a minute, Mr. Greenberg, so I can see Mr. Handler back there.

Mr. Handler: Mr. Greenberg mentioned a lot of numbers, but he did show us a document, which I wonder if I might borrow from him, I presume that he is referring only to one exhibit that was shown, G-786.

Are you referring to something else?

Mr. Greenberg: No, Mr. Handler, I refer to G-786, as well as G-785, G-787 and 788.

Now, the record will show that I supplied Mr. Hughes with these exhibits prior to the opening of the afternoon session.

Mr. Handler: May I refer just to the first one, your Honor, which I examined, and I will want to examine the others in a moment?

The Court: Now, the first one is what number, Mr. Handler?

Mr. Handler: G-786.

[fol. 1916] Mr. Greenberg: 785 is the first item.

The Court: No, Mr. Handler has examined 786.

Mr. Handler: That is all I have examined so far, your Honor, and I am going to ask—

The Court: Look, let us defer this business if you hadn't had an opportunity, or for some reason haven't recently examined these documents. There is no use going into a discussion of them now until you have a chance to examine them.

Mr. Handler: Thank you, your Honor. But could I make just a statement which might expedite the consideration of this exhibit?

The Court: All right.

Mr. Handler: This exhibit, G-786, has to do with the subject of prior acquisitions that was considered from time to time in the pretrial. We have two memoranda of law that are being typed, and we would hope that this matter would be deferred until we have an opportunity to present the memoranda of law to your Honor; and we would like, after your Honor has had a chance to examine the memoranda to be afforded an opportunity of oral argument on the admissibility of prior acquisitions. [fol. 1917] The Court: Well, I presume that we will consider these—all these exhibits deal with the same subject matter?

Mr. Handler: I don't know about the others.

Mr. Greenberg: No, your Honor, they do not. I believe two of the exhibits deal with two acquisitions. One of the exhibits is a minute of meeting of, I believe, the directors of Continental Can, whereby they express a desire to acquire a few leading glass companies.

The Court: In other words, they deal with acquisitions in one way or another.

Mr. Greenberg: That is correct, your Honor. I stand corrected.

The Court: Either past or prospective.

Mr. Greenberg: Yes.

The Court: And certainly would be embodied within the ambit of Mr. Handler's memorandum.

All right, we will consider these four documents are offered in connection with what acquisitions, past, present, future or prospective, or potential or possible.

Mr. Handler: Thank you, your Honor.

[fol. 1918] The Court: And that being so, I will defer my ruling on them until I have had a chance to hear from the defendants.

Mr. Greenberg: I did want to point out for the clarity of the record—that as I recall one of the documents, it was a letter from the Hazel-Atlas Glass Company which gave various information requested by the Department of Justice, and that I suppose is not directly related to the contemplated acquisition, past or present, only *insofar* as it relates to the proposed Hazel-Atlas acquisition.

The Court: In any event, I will assume that there is no objection to the competence of these documents, since they were supplied by the defendants in response to a request from the Attorney General.

Mr. Handler: There will be no problem of authenticity.

The Court: Yes. This is all addressed to relevance and materiality.

788 is in.

Mr. Johnson: That is included under the stipulation.

The Court: Yes.

[fol. 1919] This is simply a statement that the chairman of the board of Continental indicated that he was about to acquire a glass company, which he did.

Mr. McManus: Your Honor, I think closer reading will show—

The Court: Yes, I know.

Mr. McManus: —that he was authorized to acquire more than one.

The Court: Yes, one or more glass companies, and he acquired one.

Now, what is next?

Mr. McManus: Will Mr. Koehrman take the stand, please?

The Court: Have we dispensed with Mr. Everett, or are you still holding him?

Mr. McManus: We dispensed with him.

The Court: Dispensed with him this morning.

Mr. McManus: Excuse me. I will have to check.

I am sorry, your Honor. I stand corrected. I think Mr. Everett is still here.

The Court: All right, you may swear the witness.

[fol. 1920] ROBERT M. KOEHRMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Koehrman, by whom are you employed?

A. Owens-Illinois Glass Company.

Q. For what period of time have you been employed by that company?

A. Since July 8, 1941.

Q. And in what capacity?

A. Currently, or—

Q. What is your present position?

A. Administrative sales analyst for the glass container division.

Q. And in the early part—well, in the year 1954, what was your position with the company?

A. That same position.

Q. I show you Government's Exhibit 235-C, which refers to a sales policy meeting, July 20-30, 1954, at Catawba Cliffs Beach Club, the last page of which bears your type-written name; is that correct?

A. That is right, sir.

Q. Do you recognize this document?

[fol. 1921] A. Yes; I do.

Q. And did you prepare this document?

A. Yes.

Q. And would you tell me the circumstances surrounding your preparation of this document?

The Court: Before we do that, let's find out who met, was it a sales policy meeting with whom?

Q. Could you tell me was it a sales policy meeting of whom?

A. It was of the glass container division of Owens-Illinois Glass Company.

The Court: I see.

Q. Without going name by name, could you tell me the people that were there? They would be the sales people of that company?

A. Sales for various reasons, and particular divisions, sales divisions.

Q. Could you tell me the circumstances surrounding your preparing this document?

A. Well, I was in attendance at the meeting primarily to take notes and prepare the minutes, as well as to handle some of the arrangements that were needed right at [fol. 1922] the time of the meetings' sessions, facilities, projection equipment, things of that nature.

Mr. McManus: Your Honor, the Government offers G-235-C for the purpose generally of showing the concern of this company for competition with plastic containers. That basically is the purpose of offering 235-C.

Mr. Hughes: Is that the only purpose?

The Court: I presume that it is.

Mr. McManus: Yes, sir.

The Court: I take it that is what Mr. McManus refers to when he makes that statement.

Mr. Hughes: Yes.

Your Honor, we are getting into third-party documents now.

The Court: Yes, I understand.

Mr. Hughes: Could Mr. McManus specify any particular portion of this document on which he relies for this purpose? Or does he rely on the entire document?

Mr. McManus: I rely on the entire document, but I would be glad to point out a specific in this document if Mr. Hughes would like.

Mr. Hughes: I would like, yes.

[fol. 1923] Mr. McManus: I say this refers to competition from plastic and also from other containers, if I may add that.

Now, if we look at the top of page 5, the discussion there of Mr. A. C. White, and there he mentions specifically the canned beverage situation.

Also, if we will drop down to the Nashville branch, it refers to the canned beverage campaign, and then on beverage and industry on the next page, it refers to canned beverage, and then on the next page, the closure and plastic plans, if we will drop down to the middle of that paragraph.

The Court: That is page 7?

Mr. McManus: Yes, your Honor. I refer specifically to the part where it says, "Mr. Rudy also commented on the possibility of plastic containers as substitutes for opalware."

The Court: Yes.

Mr. McManus: And therefore we offer it for the purpose of showing competition with other containers, your Honor.

The Court: Not for purposes of showing competition. [fol. 1924] Mr. McManus: Excuse me. Showing concern this company had for competition.

The Court: Showing that certain things happened at a meeting which indicate what you claim to be some state of mind of Owens-Illinois Glass Company; is that correct?

Mr. McManus: Yes, sir; in regard to metal cans and plastic containers.

The Court: All right.

By Mr. Hughes:

Q. Mr. Koehrman, you made notes when you attended this meeting?

A. Yes, sir; I did.

Q. Did you preserve those notes?

A. No. After they had served their purpose they were destroyed, I assume.

Q. Can you tell us about how long after the meeting occurred that you prepared the minutes?

A. A week, ten days, two weeks, I would guess. Yes, this one is dated the 13th of August. The meeting took place the 29th, end of July.

Q. And would you say that you prepared this exhibit on or about the date it bears, August 13th?

A. Yes, sir.

Mr. Hughes: If your Honor will bear with me, [fol. 1925] there are a lot of these documents and I have to resort to my notes.

The Court: Yes.

Q. Now, at page 2 of this document you will see a reference in the first paragraph on that page to the sentence, "At this point Mr. Hellrung presented charts and discussed in detail the subjects of profit objectives and performance against these objectives, gross sold vs. forecast,

sales and earnings, industry position by lines, sales vs. quotas, and budget efficiency."

Do you see that sentence?

A. Yes, sir.

The Court: What page is that on?

Mr. Hughes: Page 2, your Honor. It was in the paragraph that begins on the preceding page. It is the next to the last sentence of that paragraph.

The Court: Oh, yes, I see it.

Q. And when he referred there to "industrial position," he was there referring to the glass container industry, was he not?

A. That is right, sir.

[fol. 1926] Q. And in the next paragraph, where there is a discussion of production and manufacturing program, was that discussion all about the glass container end of your business?

A. Yes.

Q. Now, at page 6, Mr. Koehrman, there is a reference here in the second full paragraph, in approximately the middle of that paragraph, to the statement, as follows:

"Mr. Delaplane reported that our sales to beverage and Coca-Cola accounts are down because of heavy purchases in the fourth quarter of last year, poor weather, the trend toward paper cup dispensers, and heavy inventory by competitors."

Do you see that?

A. Yes.

Q. Was there a discussion of the trend toward paper cup dispensers?

A. Not that I recall. There apparently was some mention of it, or I wouldn't have worked it into this report.

The Court: What do you understand "paper cup dispenser" to mean?

The Witness: Me, sir?

The Court: Yes.

[fol. 1927] The Witness: The vending machine type, your Honor.

The Court: I see, where you put a—

The Witness: Nickel in.

The Court: —a coin in the slot and Coca-Cola doesn't come out in bottles, but just pours in.

The Witness: Just drops out.

The Court: Or whatever the result is.

Mr. Hughes: Your Honor, I object to the document on the ground that it is irrelevant and immaterial; that it is hearsay; that it is remote in time to the facts which it purports to record.

The Court: Overruled.

Mr. Hughes: Your Honor, may I call attention to one of the problems that confronts us in connection with these third party documents?

On page 2, in the last paragraph, the last sentence, there is a reference to Mr. Babcock, and it says, "Mr. Babcock also emphasized the importance of bottle salesmen selling closures, thus providing one source of responsibility for a complete packaging service."

I don't know to what extent the Government plans to [foi. 1928] make use of that kind of sentence, either in its context or torn out of its context. I do call your Honor's attention to the fact that Mr. Babcock was a witness here, called by the Government, I believe the very first witness in the case. They have had the opportunity to examine Mr. Babcock about something like this, and they didn't do so, and I have a concern lest in the posture of things weight be given to that sort of statement under the circumstances under which it is admitted in evidence.

The Court: I don't quite see how it can be, Mr. Hughes, considering the purpose that Mr. McManus indicated he wished to offer this document for.

Mr. Hughes: Very well.

The Court: The limited purpose of showing a state of mind or an awareness, if you will, of Owens-Illinois of certain problems concerning bottles, cans and plastic.

All right, next.

(Government's Exhibit 235-C for identification received in evidence.)

The Court: What is the next document?

Mr. McManus: 235-D.

The Court: Are these similar minutes?

[fol. 1929] Mr. McManus: Yes, sir; these are similar minutes, except for a sales policy meeting. This one was held on February 23rd and February 24th of 1954, whereas 235-C was July 29th and 30th of 1954.

By the Court:

Q. Well, now, were these minutes taken by you under the same circumstances as the previous minutes?

A. Yes, your Honor.

Q. They were?

A. They were.

Q. From notes that you took?

A. Yes, sir.

Q. And you attended the meeting in the same general capacity?

A. That's correct, your Honor.

Q. And it was a meeting of the same general group; is that right?

A. Yes, sir.

The Court: Very good.

All right, you offer it?

Mr. McManus: Yes, your Honor, I offer it.

The Court: Do you offer it for the same limited purpose?

Mr. McManus: For the same purpose as 235-C, [fol. 1930] your Honor.

The Court: I think you ought to, at this point, before Mr. Hughes examines; point to the specific portions on which you rely.

Mr. McManus: Well, specifically, your Honor, if we will turn to page 2, and the sections on beverage industry plans, and it will start with the second paragraph of that section, and we would include the whole paragraph, with particular emphasis on the sentence starting at the bottom of the page, in which it says, "The most active sort of solicitation seems indicated if they are to keep abreast of the activities on cans vs. bottles for beverage." That would be the paragraph that we rely on for that, your Honor.

Then if we go to page 3, drug industry plans, and we go down to the paragraph, the last paragraph under the drug industry plans, which says, "The Household & Chem-

ical Division expects their '54 sales to run at least 10 per cent ahead of 1953. They currently are market-testing detergents packed in tin vs. glass. Mr. Robertson stated that the greatest H & C potential for new glass business lies in the chemical field."

[fol. 1931] We would rely on that paragraph for those specific statements, your Honor.

Then going over to page 5, if you will, sir, we would rely specifically on the part which deals with the New York branch, in which Mr. J. W. Thayer states in the second sentence, "He felt that a price increase may result in some loss of volume to the Glass Container Industry in glass-tin competitive lines."

Those would be the specifics that we refer to, your Honor.

The Court: All right, do you wish to examine about this, Mr. Hughes?

Mr. Hughes: Yes.

By Mr. Hughes:

Q. Mr. Koehrman, you don't recall what Mr. Thayer was referring to when he used the expression "in certain glass-tin competitive lines," that Mr. McManus just read into the record, do you?

A. Not definitely, sir, no.

Q. Now, do you recall when, with reference to the meeting, these minutes were prepared?

A. I would assume within ten days or two weeks.

Q. Were your working notes destroyed?

[fol. 1932] A. Yes, sir.

Q. And this again was a sales policy committee meeting of the glass container division; is that correct?

A. Yes.

Mr. Hughes: Same objection, your Honor.

The Court: Same ruling.

(Government's Exhibit 235¹D for identification received in evidence.)

Mr. McManus: That is all we have of Mr. Koehrman, your Honor.

The Court: Thank you, Mr. Koehrman. You may step down.

(Witness excused.)

The Court: Next witness.

Mr. Greenberg: Mr. Everett, will you please take the stand.

RICHARD EVERETT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Chautauqua, New York.

Q. And are you employed by Continental Can?
[fol. 1933] A. Yes, I am.

Q. How long have you been employed by this company?

A. Five years.

Q. What have your positions been in this five-year period?

A. Throughout the period?

Q. That is correct.

A. I started out as an economic analyst in 1955, then became supervisor, something or other supervisor, and now I am an assistant manager of sales control.

Q. Have you been in sales control this five-year period?

A. Sales control is most of the department that used to be commercial research, and I have been in that.

Q. Would you tell us, sir, what the function of this department has been since you have been affiliated with it?

A. The department does economic forecasting, market forecasting, market analysis, sales analysis and a certain amount of sales budgeting work. Those are the major functions.

Q. Have you completed your answer?

A. Well, there are some other things that I [fol. 1933a] really don't know anything about, about sales compensation arrangements, sales quotas, and so forth.

Q. Is the information obtained by this group disseminated to other groups in your company?

A. Oh, yes, practically all of it.

Q. When you say "all of it," that includes the sales force; is that correct?

A. No, I mean all the information is passed on to someone.

[fol. 1934] Q. Can you identify in a general way the persons or groups that have received this information?

Mr. Hughes: Your Honor, haven't we received all this?

The Court: If this took over the functions of the Commercial Research Division in large measure, I don't think we have to go through dissemination. The point is, you are concerned now with a particular document, aren't you?

Mr. Greenberg: That is correct, your Honor.

The Court: G-614, signed by Mr. Everett.

Well, let's go to that, find about it and then go on from that.

Mr. Greenberg: Very well, in the light of Mr. Hughes' statements, I will commence to cover the documents specifically.

Q. I show you Government's Exhibit 614 and ask you if you recognize it?

A. Yes, I do.

Q. Tell us what it is, sir?

A. Well, it appears to be—it is a report of the results of a survey, of some kind of survey of soft drink sales in 1955.

Q. And you executed this document; is that [fol. 1935] correct, sir?

A. Yes, I wrote the material out and I signed it.

Q. And this was done only in a—

A. Not really. I took this over the telephone because I was using the desk of the person who usually does it, and I didn't know anything about it.

Q. At any rate you took down the words as carefully as you could and reported them in this memo; is that correct, sir?

A. I took down the data and wrote the words based on conversation.

The Court: Who called you? Who was this mysterious gentleman?

The Witness: Well, it was a young lady, I believe, who worked with the organization that made the survey, and I don't remember what organization it was.

The Court: Let me get this: Where did all these charts come from that are annexed to this document? You didn't take those over the telephone, too, did you?

The Witness: No. Well, my memory of this is necessarily vague since it was an accident that I got involved in it, but I believe that the material was either left by the [fol. 1936] fellow who ordinarily did it, that is the fact material was, and the charts were set up by him, and I filled in the actual figures, or someone else in the department may have made them up, or I may have been given large numbers of pieces of material, put them together. I can't recall.

By Mr. Greenberg:

Q. Sir, was this memorandum sent by you to Mr. Buckley?

A. It was sent by the department to Mr. Buckley.

The Court: You didn't deliver it yourself?

The Witness: I did not know Mr. Buckley and I didn't take it to him.

Q. Did you, when you executed this memorandum, send copies to Mr. Wojtul, Mr. Neuman and Mr. Fisher?

A. I am sure copies were sent to them.

Mr. Greenberg: Government offers G-614 into evidence.

The Court: For what purpose?

Mr. Greenberg: For the limited purpose, your Honor, to show the awareness of this company of competition—withdrawn.

We offer this document to show the awareness of Continental Can of competition from glass containers seeking to enter the can soft drink market.

[fol. 1937] Mr. Hughes: What was that last?

Mr. Greenberg: As it sought to enter the can soft drink market.

Preliminary examination.

By Mr. Hughes:

Q. Mr. Everett, how long had you been with the company when you prepared this document, G-614?

A. Five weeks.

Q. Prior to that where had you been?

A. I had been at the McGraw-Hill Publishing Company.

Q. And what was the nature of your work there?

A. I was an economist.

Q. They are a publishing house, are they not?

A. That is right.

Q. Prior to that where had you been?

A. That is where I started.

Q. So that y-ur acquaintance with the can manufacturing industry at the time you wrote this memorandum was approximately five weeks?

A. Yes; it was entirely five weeks.

Q. And as I understand it, you were sitting at somebody's desk and you sat down together and worked on this?

A. That's right.

[fol. 1938] Q. In this document in the second paragraph you said:

"Results of these surveys should be taken with a liberal supply of salt, because any survey of this kind has a pretty substantial margin of error."

Do you recall what prompted you to make that observation?

A. No, I don't recall specifically but I had a little experience with surveys, and I had been told a little about this survey.

Q. You knew enough to be a little leery of surveys, is that right?

A. Yes, I did.

Mr. Hughes: Same objection.

The Court: Overruled.

(Government's Exhibit 614 for identification received in evidence.)

The Court: Is there anything further?

Mr. Greenberg: We have no further questions from Mr. Everett nor do we have any further documents to show him.

The Court: All right, thank, you, you may step down. [fols. 1939-1942]. The Witness: Thank you.

The Court: All right.

(Witness excused.)

Mr. McManus: Your Honor, at this time we would like to offer, if the defendant has no objection, 349, 349-A and 349-B.

They are the price comparison charts which were prepared by Owens-Illinois Glass Company and they relate to price comparisons between metal cans, glass containers and plastic containers. 348 was admitted without objection and the defendant indicated they might do the same with 349.

Mr. Hughes: No objection.

The Court: All right, they may be received.

(Government's Exhibits 349, 349-A and 349-B for identification received in evidence.)

[fol. 1943] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Johnson: May I be heard briefly, your Honor?

The Court: Yes.

Mr. Johnson: In an effort, your Honor, to eliminate as much non-controversial matter as possible, I voluntarily submitted a list of documents to which we did not propose to object. Included with that list was No. G-788, which we now discover should not have been included in that list. That was one of the documents that was referred to here today.

If the Court pleases, I would request that we be relieved of my stipulation with respect to that document in order that it may be considered along with other documents relating to this matter.

The Court: In other words, what you are saying is that [fols. 1944-1948] so far as 788 is concerned you question its relevance and materiality but not its competence.

Mr. Johnson: Not its competence.

The Court: Very well.

We will relieve you of the stipulation to that extent.

[fol. 1949] SMITH L. RAIRDON, called as a witness on behalf of the Government, was duly sworn.

Mr. Greenberg: Will you please mark these as Government's Exhibits for identification.

(Marked Government's Exhibits 366 and 367 for identification.)

Direct examination.

By Mr. Greenberg:

Q. Where do you reside, sir?

A. Toledo, Ohio

Q. And you are now employed by the Owens-Illinois Glass Company?

A. Yes.

Mr. Greenberg: The Government offers Exhibit 366 for identification into evidence.

Mr. Johnson: No objection.

Mr. Greenberg: The Government offers Exhibit 367 for identification into evidence.

Mr. Johnson: No objection.

The Court: They will be received pursuant to stipulation.

(Government's Exhibits 366 and 367 received in evidence.)

Q. Were you employed by the Owens-Illinois Glass [fol. 1950] Company during the period 1950 to 1953?

A. Yes, sir.

Q. What was your position or positions, if more than one, during that period of time?

A. As of 1941 I was elected a vice-president of the company.

Q. I am talking about the period 1950 to 1953.

Sir, what was your position or positions, if more than one, with the company?

A. (Continuing) And I was general—as of 1950 I was general sales manager of the Glass Container Division of Owens-Illinois until early in 1953.

Q. And what were your duties and responsibilities in this position?

A. The general duties of a sales administrative management job.

The Court: It was your job to sell the glass; is that right?

The Witness: I was the general sales manager; that's right.

Q. Did Owens-Illinois have a research and development policy committee for plastic containers in 1950?

A. Owens-Illinois had a research and development policy committee for any type of container or product [fol. 1951] in which we were interested, or might be.

Q. Did this group inquire into the subject of plastic containers in 1950?

A. In that period, yes, sir.

Q. And by "that period" do you mean the period 1950 to 1953?

A. And continuing.

Q. And were you on this committee?

A. Yes, sir.

Q. And were you on this committee from 1950 to 1953?

A. Yes, sir.

Q. And who else was on the committee, sir?

A. Mr. Burch, of research; Mr. Wade, the general manager of the division.

Q. By "division" you mean the glass division?

A. Glass Container Division. Representatives of general manufacturing, production, and there may have been others, sir.

The Court: In other words, this was a committee representing the various segments of the company.

The Witness: Yes, your Honor.

The Court: Combined together for research and development activities.

[fol. 1952] The Witness: Yes, sir.

Q. Now, with respect to research and development activities in the plastic container field, can you tell us what this group or committee did in the period 1950 to 1953?

The Court: This in quite general terms, Mr. Rairdon.

A. Well, the committee, sir, largely considered the work that was done by its different members. Physical research would have been the responsibility of Mr. Burch, and any determination of opportunities in the market was generally looked to, to sales people. Any production or engineering problem that would come before the committee would probably largely be commented upon by that representative.

Q. Sir, during the period 1950 to 1953, did this committee coordinate a survey of Owens' customers to determine whether they were using plastic containers?

Mr. Johnson: I object to the question.

The Court: On what ground?

Mr. Johnson: A leading question.

The Court: Well, I will overrule the objection.

Q. Would you answer the question, sir?

A. Would you let me be sure I understand the [fol. 1952a] question?

Mr. Greenberg: May I have the question read back, your Honor?

(Question read.)

A. As an outgrowth of the considerations of the committee, studies or searches were made as to potentialities of plastic containers.

[fol. 1953] Q. Sir, I show you Government's Exhibit 239 for identification and ask you if you recognize this document?

A. I am sure that I wrote this letter.

Q. Was this the type of letter or document which you would ordinarily execute in the course of your business at that time?

A. It would be perfectly normal.

The Court: Why don't you ask him, Mr. Greenberg: did you prepare this letter in the regular course of the duties of your position with the company, and was it the regular course of your duties to prepare letters of this character, including this one?

Q. Sir, did you prepare this letter—

The Court: You heard my question, Mr. Rairdon. Will you answer that?

The Witness: I would consider it part of my responsibilities, your Honor.

Mr. Greenberg: The Government offers Exhibit G-239 into evidence.

Mr. Johnson: May I examine?

The Court: I think before you examine, Mr. Johnson, we will hear Mr. Greenberg as to the purpose of this offer.

[fol. 1954] Mr. Greenberg: Your Honor, we offer G-239 for all purposes.

Preliminary cross-examination.

By Mr. Johnson:

Q. Mr. Rairdon, as of now, do you have any independent present recollection of preparing this document, G-239?

A. Sir, I feel quite certain that I prepared this document.

Q. You so testified, but do you have any present independent recollection of having prepared it?

A. I am sorry, sir, the distinction isn't clear to me. I recall that I prepared this document. It is in my words.

Q. So you say you now know that you prepared it; is that your testimony?

A. I have every feeling that I prepared it.

Q. But you are not prepared to say that you now know you prepared it?

A. It seems to me that we are saying the same thing.

Q. The difference, I believe, it seems to me, is that you assumed you prepared it?

Mr. Greenberg: I am going to object to the argumentative nature of Mr. Johnson's question.

[fol. 1955] The Court: I think we will permit it. We will

allow a fair amount of latitude both with respect to leading, Mr. Greenberg, and with respect to argumentative questions.

And I can also say to you that nobody should be under any misapprehension that any questions of this character, no matter how they are asked, will affect me in the slightest degree one way or the other.

By Mr. Johnson:

Q. Mr. Rairdon, with respect to this research and development policy committee, can you tell me how many projects it had underway at this time in February, 1950?

A. No, sir.

Q. Did it have several projects underway?

A. Yes, I am sure it did, but I couldn't tell you how many.

Q. The project referred to in this document was not the sole one?

A. No, sir.

Q. Can you give me any idea of how many projects you had underway at that time?

A. No, sir, I couldn't. Some might be smaller or larger [fol. 1956] than others and I couldn't give you an estimate of how many.

The Court: Would it be as many as ten projects?

The Witness: It could be, your Honor, or more.

The Court: Or more?

The Witness: Yes.

Q. What general fields did these projects cover?

A. Projects relating to the development of opportunities to sell more containers broadly. Obviously part of them would relate to research and development projects relating to glass containers. That particular one relates to the consideration of plastic containers.

The Court: In other words, is it a fair statement, Mr. Rairdon, that your company is constantly engaged and has been for a good many years in research and development of all phases of your activities in order to improve your techniques, to improve your product, to cut your costs, to increase service to your customers, to open new

markets and to promote the sale of your products generally? Is that a fair statement?

[fol. 1957] The Witness: That is a fine statement, your Honor.

Q. In 1950 was Owens-Illinois in the plastics business, any phase of the plastics business?

A. We made plastic closures, but if you want to have the question in its totality of plastics, we had been for a number of years working with plastic materials. As I recall it, at that time closures out of plastic were the only product, although I believe immediately I would have to make some exceptions. There were several custom-made products and I believe—of this I am not certain as to the timing—we had done some experimental work with plastic vials and jars, and during World War II we had made what I suggest to you would be called a plastic, a plastic bottle that was filled with atabrin tablets that was used by the Armed Forces. That was more or less of a single project and I don't know that I can say that was a business. These other operations were commercial.

Q. Were you making pillboxes at that time?

A. I can't be certain as to the timing, as to whether we were in 1950.

The Court: Let me ask you this: in the period of 1950 to [fol. 1958] 1953 did your company have a separate plastics division?

The Witness: Our plastics operation combined what we termed closures and plastics.

Q. Looking at this document, G-239 for identification, in the second paragraph there is a reference to Modern Packaging. Can you tell me what that reference is to?

A. That refers to Modern Packaging Magazine, and that would be the ordinary way of referring to it.

Q. Was the information that is contained in that paragraph obtained from that magazine?

A. Yes, that is what the letter indicates.

Q. Do you recall that it came from that magazine?

A. I must have read the magazine, otherwise I wouldn't be so stating it here.

Q. Looking at the third paragraph, there is a reference to Hines Honey & Almond Cream. Did Owens-Illinois sell

products for Hines Honey & Almond Cream at that time?

A. As I recall it, we did not. I believe we did to Mennen's.

Q. You say you believe you did to Mennen's?

A. Yes, sir.

[fol. 1959] Q. Do you know whether Hines Honey & Almond Cream is today packed in plastic containers or not?

A. No, sir.

Mr. Johnson: Your Honor, I object to the document. It is remote in time. It has no possible relevance to any of the issues in this lawsuit. It is filled with hearsay and the usual business chatter.

There is no possible foundation, I believe, for this document under Section 1732 of the United States Code. This document illustrates various things that Section 1732 was designed not to accommodate. There is here none of the protection, afforded by the formal routine such as one finds in making entries in ships' logs or hospital records. The fact that it may have been made or that it was made by this witness in the regular course of his duties, I submit, is not sufficient for making it admissible under Section 1732. There are a great many documents which are made by any businessman in the ordinary course of his business and in the scope of his employment but which by no stretch of the imagination come within the safeguards that are intended to be set up and by the formalities provided by Section 1732, and I submit that the document is not admissible.

[fol. 1960] The Court: Have you anything to say, Mr. Greenberg?

Mr. Greenberg: Your Honor, we have submitted a brief which we believe fairly outlines the state of the law, but I would like to make this one comment, and it is more factual than it is legal. This document is one of a series of documents designed to show, or designed to indicate to Owens-Illinois what effect sales of plastic containers has had on their business. It was against their interest at that time for plastic containers, obviously, to be sold to their customers. They had no motive to misrepresent what the intrusions of plastic containers were in their customers' accounts. These records are the type of records which large corporations compile and use. It is a

document which was a result of a research and policy committee, which had been set up for the purpose of scanning the plastic field to determine what Owens-Illinois' position was to be.

The Court: Well, I think there may be some doubt as to whether specific details of fact in this document have any important probative value, or perhaps any probative value at all. However, I will overrule the objection and [fol. 1961] take the document for what it purports to be on its face.

Mr. Johnson: I call your Honor's attention to the fact that this is being offered for the truth of the statements in it, and your Honor's ruling, if adhered to, will mean that material, taken at some unknown date from some unknown magazine, stating that in 1950 there were over a hundred products going to market in these containers, and that as of last September over 160,000 gross of them have been sold, will be taken for the truth of that statement. I believe that that is going considerably beyond any admission of documents that I have been able to find in the books so far, taken under these circumstances.

The Court: Do you still offer this for all purposes?

Mr. Greenberg: Your Honor, the Government—

The Court: For instance, what do you say to Mr. Johnson's statement about something lifted from a magazine called Modern Packaging?

Mr. Greenberg: I was going to answer that very point, your Honor. The Government does not maintain that every single statement of fact in this particular document deserves the highest possible weight. As far as Modern [fol. 1962] Packaging is concerned, that is a well recognized trade journal.

The Court: Mr. Greenberg, as far as I am concerned, until this moment I never heard of Modern Packaging in my life.

Mr. Greenberg: May I ask the witness?

The Court: To me Modern Packaging might be a slip sheet with a circulation of 500. It might be a promotional advertising gimmick that was utterly unreliable. Modern Packaging means absolutely nothing to me. And this illustrates precisely the vice that Mr. Johnson pointed out. I will not take this as evidence of the truth of the facts

stated therein. I will take it merely as evidence of information and suggestions that were being made within the corporate organization of Owens-Illinois Glass Company at that time.

Mr. Greenberg: Your Honor, there are statements perhaps in this document and other documents to come which are based upon the activities of the Owens-Illinois Glass Company in survey. It is not based on hearsay or the magazine.

The Court: Mr. Greenberg, you are talking about an entirely different matter. If Owens-Illinois made a survey [fol. 1963] and the survey can be shown to have some solid basis, some foundation, that is another matter entirely. But this does not.

Let me ask you this by way of illustration, Mr. Rairdon:

By the Court:

Q. Am I correct in assuming that this information here was miscellaneous information that came to you in the course of your duties here and there?

A. Yes, sir.

Q. It was information you picked up here and there?

A. That's right.

Q. You didn't attempt to verify the reliability of this, did you?

A. Your Honor, now you are referring to the Modern Packaging?

Q. I am referring now to the third paragraph more than I am to Modern Packaging.

A. No, sir; I didn't, personally.

The Court: No, I will take it for the limited purposes that I indicated.

Mr. Greenberg: We are talking now in the context of Modern Packaging statements and things of that nature, are we?

The Court: No, I am taking it for the purpose [fol. 1964] that I stated quite clearly on the record I took it for, Mr. Greenberg.

By Mr. Greenberg:

Q. Mr. Rairdon, will you tell us what Modern Packaging is?

A. Modern Packaging magazine is—

The Court: For instance, I don't think anybody questions the fact probably that Modern Packaging contains such a statement at some point.

Q. Sir, will you tell us what Modern Packaging is?

A. I would consider it a well recognized, well established magazine, covering the usages of packaging materials and the opportunities for them. It has been in existence possibly 30 years, I imagine, and is a trade magazine.

Mr. Greenberg: Now, the Government begs your Honor's pardon in not adducing testimony of that type prior to the witness' appearance.

(Government's Exhibit 239 for identification received in evidence.)

By Mr. Greenberg:

Q. I now show you Government's Exhibit 241, Mr. Rairdon, marked for identification, and ask you to [fol. 1965] identify it.

A. I believe this is as I wrote it.

Q. Was this document made by you in the course of your duties and responsibilities at that time?

A. Yes, sir.

Mr. Greenberg: The Government offers 241 into evidence.

Mr. Johnson: The same objection.

The Court: Same ruling.

(Government's Exhibit 241 received in evidence.)

Mr. Johnson: Your Honor, there are a number of these documents, and I have a few general questions. I suggest that we go through them all before I ask my questions.

The Court: Why don't we go through the documents, then you will get an opportunity to ask general questions if you wish.

Mr. Johnson: Very well.

The Court: If you prefer me to withhold my rulings until you have examined, I will do so.

Mr. Johnson: No, sir. If I have particular objections, I will so indicate.

The Court: Very good.

[fol. 1966] Q. I now show you Government's Exhibit 259, which has been marked for identification, and ask you to identify it.

A. I believe that is my letter.

The Court: Was this made under the same general circumstances and conditions as the other letters?

The Witness: Your Honor, I would so consider it.

The Court: You offer it?

Mr. Greenberg: I offer G-259 into evidence.

The Court: Same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

Mr. Johnson: I understand that unless other wise indicated, they are admitted for that limited purpose?

The Court: That is correct.

(Government's Exhibit 259 for identification received in evidence.)

Q. I now show you Government's Exhibit 263, which has been marked for identification, and I ask you to identify it.

[fol. 1967] The Court: As you see these, Mr. Rairdon, as we refer to them, will you tell us, considering this as an overall question from the Court, whether the document was made by you under similar circumstances as the other documents that have been shown to you? We will save a good deal of time that way.

The Witness: This document, again, is one which I would consider prepared in the same manner, under the same—

The Court: In the same general content.

The Witness: In the same general content.

The Court: All right, you offer it, Mr. Greenberg?

Mr. Greenberg: I offer it.

The Court: Objection from Mr. Johnson. Objection overruled. Same ruling.

(Government's Exhibit 263 for identification received in evidence.)

By Mr. Greenberg:

Q. I show you Government's Exhibit 266 for identification and ask you to identify it?

The Court: All right, you make the same statement with respect to 266, if you recognize it, sir? Wait a minute. That has something attached to it.

The Witness: I can make the same statement [fol. 1968] within the same context, with respect to my memorandum of February 11, as has been made.

Mr. Greenberg: Thank you.

The Court: All right, Mr. Greenberg offers it?

Mr. Greenberg: I offer it.

Mr. Johnson: Objection.

The Court: Same objection; same ruling.

(Government's Exhibit 266 for identification received in evidence.)

Mr. Greenberg: Your Honor, I wish to preface my question with the statement, that the reference now is to G-285. However, there was some confusion in tabbing, so that more than one memorandum is included under G-285, and I wish to draw your Honor's attention to the last memorandum.

The Court: What is the date of the last one?

Mr. Greenberg: Which is included under this tab number, dated April 28, 1953.

The Court: I have it.

By Mr. Greenberg:

Q. I show you this exhibit, sir, and ask you if you can identify it?

The Court: Can you answer the same questions [fol. 1969] about it, please, Mr. Rairdon?

A. I recall this letter, and it was written in the same context of understanding of responsibility.

The Court: Fine.

Mr. Greenberg: Your Honor, the next series of documents—

The Court: All right.

Now, you offer it?

Mr. Greenberg: I offer it.

Mr. Johnson: Same objection.

The Court: Mr. Johnson objects. Objection overruled. Same ruling.

(Government's Exhibit 285 for identification received in evidence.)

Mr. Greenberg: Did Mr. Johnson want to proceed with the examination of the witness at this juncture? Because the next series of documents were addressed to and we believed were received by the witness, but were not written by him.

Do you wish me to proceed, Mr. Johnson?

Mr. Johnson: I think you can proceed, Mr. Greenberg.

Mr. Greenberg: Yes.

Turning back now to G-247.

[fol. 1970] By Mr. Greenberg:

Q. I show you Government's Exhibit 247 for identification and ask you if you can identify it.

A. This appears to be a letter that I received in 1950 from Mr. Wade.

Q. And directing your attention to the period of time covered by the letter, did you receive other memoranda of that type?

Mr. Johnson: Objection.

The Court: I sustain the objection.

Who is Mr. Wade, Mr. Rairdon?

The Witness: I was responsible to him, and he was at that time the general manager of the glass container and enclosure—the overall.

The Court: I see.

Q. And, sir, did memoranda or other writings pass between you and Mr. Wade during that period of time?

A. I would presume so in the normal relationship that we had.

Q. And is this letter or memoranda the type that would pass between you and Mr. Wade in the ordinary course of your duties and responsibilities?

A. I would so consider.

Mr. Greenberg: Government offers 247 into evidence.
[fol. 1971] Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 247 for identification received in evidence.)

Mr. Handler: I thought the objection was sustained.

The Court: No, I said, "Same objection, same ruling."

Mr. Handler: I'm sorry.

Q. I now show you Government's Exhibit-252 for identification and ask you if you can identify it.

A. I have no doubt that I received this letter at that time.

The Court: Who is Mr. Carr?

The Witness: He was Closure and Plastics Division manager, sir.

Q. And did you receive memoranda or writings of this type during that period of time?

A. It would have been normal, sir, for me to have received them.

Q. And did documents pass between you and Mr. Carr in the regular course of your duties and responsibilities at that time?

[fol. 1972] A. They would.

Mr. Greenberg: Government offers 252.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 252 for identification received in evidence.)

Q. I show you Government's Exhibit 262 for identification and ask you if you recognize it.

The Court: Will you consider the same questions asked about 262?

Mr. Greenberg: Excuse me. I missed one.

The Court: All right.

Q. I refer you to Government's Exhibit 261, and ask you if you can identify it.

A. This appears to be a letter I received in June in answer to previous correspondence.

Q. Would your answers with respect to this document be the same for Government's Exhibit 252?

A. My answer would be that this document, like the others that we have talked about, I was in the context of my understanding as part of the job, if that is what is asked.

The Court: Who is Mr. Ryan?

The Witness: He was a salesman in New York [fol. 1973] at that time, sir.

The Court: Was this, in essence, a report from one of your New York salesmen to you?

The Witness: It would be in the process, your Honor, of collecting information, because this particular salesman called upon industries where containers of this kind could potentially be used.

The Court: And he transmitted that information to you as part of what you might call sales intelligence; is that right?

The Witness: That's right.

By Mr. Greenberg:

Q. I call your attention to Government's Exhibit 262, and ask you to identify it.

The Court: Have you offered 261?

Mr. Greenberg: I offered 261.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 261 for identification received in evidence.)

The Court: With respect to 261, has the Government anything further to say with respect to 261, or do they consider it to be in the same category as all the other documents [fol. 1974] from Owens-Illinois that were received by Mr. Rairdon thus far?

Mr. Greenberg: Your Honor, the Government intends with respect to all the Owens-Illinois documents, and does

so, to offer them in for all purposes subject to your Honor's ruling.

The Court: Well, if you intend to offer this for all purposes, and contend that there is a distinction between it and the other documents on which I have ruled and on which I have limited the purpose for which they were received, it seems to me that there is an obligation on the Government to do more about laying a foundation than they have done. If they are merely offering it generally, I will hear the objection and make the same ruling.

Mr. Johnson: I have the same objection.

The Court: Yes, same ruling.

Mr. Greenberg: Are we talking now with respect to 261, your Honor?

The Court: Yes, that is what you just offered.

By Mr. Greenberg:

Q. Sir, can you turn your mind back to 1950 and tell us whether Mr. Ryan, or do you know whether Mr. Ryn was [fol. 1975] collecting statistics with respect to Plax Corporation at that time?

Mr. Greenberg: Withdraw the question.

Q. Sir, is this the type of memoranda which was executed at that time in the regular course of business of Mr. Ryan? Do you know that?

The Court: Well, I thought all the testimony is that this was a report made by a salesman in the regular course of his business. That is all right. You don't have to go into that.

Mr. Greenberg: If the Court please, the Government respectfully urges that under the case law in the Second Circuit, the Pekelis case and other cases clustering around that case, we have made out an adequate foundation for this document as a business record. Now, we do not argue that statements, all statements, must be given equal weight. We agree with your Honor that a perusal of the document would indicate that certain statements are worth less weight than others. However, we respectfully assert that an adequate foundation has been laid for the introduction of this document as a business record.

The Court: Well, I have admitted it as a business record in the limited sense that I have admitted these other documents.

[fol. 1976] What do you say, for instance, to the statement, "Plax Corporation were quite dissatisfied with the four or five salesmen operating in this territory and they have discharged them within the last week or ten days?"

Suppose that fact should become relevant here—I am not saying it would or it wouldn't, but let's assume it would—how would you expect the Court to treat that fact or that statement if I admitted this document for all purposes?

Mr. Greenberg: I would think, your Honor, that unless Government produced Mr. Ryan, that it would not deserve as much weight as other statements in the exhibit.

The Court: What other statements, for example? Let's get this comparative statements business squared away.

Mr. Greenberg: For example, in the second full paragraph of the statement that "Attached hereto is a complete price list put out by Plax Corporation on Plax bottles," and a statement that he had started a file several months ago, which has been attributed to Mr. Ryan. We should think that that should have a higher weight than [fol. 1977] the other statement. The fact that Plax Corporation was dissatisfied clearly is a statement of a conclusion and opinion, and it seeks to inquire into the operation of another company's or another person's mind, and that is to be contrasted with the statement as to what a particular employee of Owens-Illinois was doing, or officer, whatever he was.

The Court: Well, I would take this as a report of a salesman to the sales manager of the company.

Mr. Johnson: Subject to the prior limitation.

The Court: Subject to the prior limitation.

Mr. Greenberg: Have we established what Mr. Ryan's position was? I don't recall.

The Court: Yes, he was New York salesman.

By Mr. Greenberg:

Q. I now show you Government's Exhibit 262 for identification and ask you to identify it.

The Court: Is this a similar report as the other one, Mr. Rairdon?

The Witness: You- Honor, I believe this is a similar report, within the same context of understanding.

The Court: All right, you offer it?

Mr. Greenberg: I offer it, your Honor.

Mr. Johnson: Same objection.

[fol. 1977a] The Court: Same objection; same ruling.

(Government's Exhibit 262 for identification received in evidence.)

[fol. 1978] Q. I show you Government's Exhibit 264 and ask you the same questions.

A. I believe this is again a letter under the same general subject.

Mr. Greenberg: I offer 264.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 264 for identification received in evidence.)

Q. I show you Government's Exhibit 243 and ask you the same questions.

A. This appears to be another report of the same type.

The Court: Who was Rodgers?

The Witness: He was the Eastern Regional Manager.

The Court: For sales?

The Witness: For sales, yes, sir.

The Court: It is in the same general context, I take it, as the other documents?

The Witness: Yes, your Honor.

The Court: All right. You offer it, Mr. Greenberg?

Mr. Greenberg: Yes, I offer this.

[fol. 1979] The Court: Same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 243 for identification received in evidence.)

Q. I show you Government's Exhibit 244 and I propound the same questions.

A. This memorandum appears to be a part of the same considerations by the research and development policy committee on this subject.

The Court: You offer it?

Q. Who was Mr. Carr at that time?

A. At that time he was the general manager of the closure and plastics division.

Mr. Greenberg: I offer it in evidence.

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 244 for identification received in evidence.)

Q. I show you Government's Exhibit 245 and I propound the same questions.

A. This memorandum appears to be in the same light and [fol. 1980] within the same general category as the others.

The Court: I take it 245 is offered by the Government?

Mr. Greenberg: Yes, it is offered.

The Court: And the same objection?

Mr. Johnson: Same objection.

The Court: Same ruling.

(Government's Exhibit 245 for identification received in evidence.)

The Court: I suggest that we take a brief recess and that you show this witness during the recess the balance of the documents that you intend to offer. Then ask him one general question concerning them, listing the documents. Unless there is any special feature that you wish to go into, I will hear a general objection and make a general ruling, and we will all save a good deal of time.

Mr. Greenberg: The Government will do that, your Honor.

The Court: Fine.

(Short recess.)

The Court: Now, Mr. Greenberg, where do we stand here?

Mr. Greenberg: Your Honor, the witness has read the [fol. 1981] balance of the documents which I intend to cover with him, and I am ready to proceed with a few questions to enable us to offer the balance of these documents.

The Court: First let us identify the specific documents that we are talking about.

Mr. Greenberg: That is what I intend to do, your Honor.

The Court: Thank you.

By Mr. Greenberg:

Q. Sir, have you read Government's Exhibit 249 for identification?

A. This, Mr. Greenberg, was in the list that I just examined with you?

Q. That is correct.

The Court: You do not have to ask him separate questions. Go on with the list and read him the whole of documents.

Q. Have you read 249, 251, 267, 280 and that part of 285 which is represented by memoranda of May 8, 1953, and May 7, 1953?

A. In the same fashion, yes, sir.

[fol. 1982] Q. And would your answers to my questions and the Court's questions propounded with respect to prior documents which you have identified be the same with respect to the current list of documents?

A. The documents that I examined relate to the matter which arose and was corresponded about in the previous documents that we had examined here this morning.

Mr. Greenberg: Thank you.

The Court: And they came to you or were sent by you, whichever they were, within the same framework and within the same context?

The Witness: Yes, your Honor, within the same framework and within the same context.

The Court: Very well.

Mr. Greenberg: I offer these documents.

Mr. Johnson: Same objection.

The Court: All right, same ruling.

And I may say, so that it is quite clear on the record, that I am taking these documents as relevant material except for any argument on the time factor that the defendant may make, upon the general theory that the state of mind and the activities of buyers and sellers of products [fol. 1983] is some evidence at least on questions, among others, of markets.

Mr. Greenberg: Thank you, your Honor.

(Government's Exhibits 249, 251, 267, 280 and 285 for identification received in evidence.)

The Court: Now do you have some questions, Mr. Johnson?

Mr. Johnson: Yes, I have a few, but before going into the questions, your Honor, I would like to call your Honor's attention to an incident which occurred here when I had Dr. Ball under cross-examination.

At that time I showed him a copy of Modern Packaging Magazine for January, 1960, and Mr. Greenberg at that time made this statement, and I am reading from page 761 of the record:

"Your Honor, articles of that type are usually advertisements put in by a particular company. If there is no identification of author, it is totally unreliable, and I don't see how we can use it with the witness to impeach him, or for any other purpose."

Mr. Greenberg: I would like to make one comment, your Honor. My statement to the Court was confined to that particular item as it appeared in that particular magazine on that particular day.

[fol. 1984] The Court: That is not what you said.

Mr. Greenberg: Then I amend my statement and clarify it for the record.

The Court: In other words, you now think that Modern Packaging is a great and good magazine, is that right, Mr. Greenberg?

Mr. Greenberg: I now think, your Honor, that Modern Packaging, like other magazines which are well known and well thought of, do contain advertisements, and that there

are other articles which are signed and which are reliable in that magazine.

The Court: Let us get this straight, Mr. Greenberg. Do you know whether the article to which this witness referred was signed or unsigned?

Mr. Greenberg: I do not, your Honor.

The Court: Do you know whether it was an advertisement or not an advertisement?

Mr. Greenberg: I do not, your Honor.

The Court: Very good. That confirms me in my judgment that these should not be admitted for all purposes.

Go ahead now, Mr. Johnson.

Cross-examination.

By Mr. Johnson:

Q. Mr. Reardon, you have considered here this morning [fol. 1985] a number of documents from the files of Owens-Illinois from the period 1950 to about 1953 relating to various discussions with respect to plastics. Do you know whether these documents which were considered here were all of the documents that you saw or read during that period relating to this subject?

A. I do not know that, Mr. Johnson.

Q. In other words, you do not know whether these documents were taken out of context or not? By "context" I mean that there may have been related correspondence or other related material with them, and I am simply asking you whether you know or not.

A. There could well have been, as indicated in some of the documents, meetings, for example, that were interspersed, and there could have been other papers, and I wouldn't know.

The Court: In other words, you do not purport to say that this is by any means either your complete file or the company's complete file on this subject matter during this period, is that right?

The Witness: Exactly, your Honor, that is correct.

Q. Looking, Mr. Reardon, at the attachment to Exhibit [fol. 1986] G-266, do you know anything about that document except the fact that somehow it came to your hands?

A. That is all, that it came to my hands in the normal fashion and I communicated about this in what I considered to be a normal fashion.

Q. And you do not know the source of any of the information?

A. Except as indicated.

Q. Except as indicated in the document?

A. In the document itself.

Q. Now looking at Exhibit 245, which is a letter from Carr addressed to Rodgers, do you think it is fair to say that that letter indicates that Mr. Carr wasn't too convinced by some of the arguments that had been made to him?

Mr. Greenberg: Your Honor, I wish to note an objection to that question for the record.

The Court: Overruled.

A. Mr. Johnson, Mr. Carr indicates we are taking another look at the possibilities of plastic containers, and beyond that, as I reread the context, I don't see any particular indication of his prejudgment, you might [fol. 1987] say.

Q. There is some discussion of the weight of opal jars, is there not?

A. Yes, sir.

Q. He seems to think that the weight of opal jars is a favorable characteristic, doesn't he?

A. He seems to be mentioning points on both sides in that section.

Q. In other words, going back to my original question, he apparently isn't entirely convinced of some of the arguments that have been made in this series of correspondence, is that true?

A. I would say it is an indication that he is proceeding carefully on any contribution to an appraisal.

Q. Is it fair to say, Mr. Rairdon, that these documents relate largely to the squeeze bottle business?

A. Mr. Johnson, it appears to me that they relate to plastic bottles or plastic container business, and the only plastic bottle there was then as indicated in the context of the different documents that you refer to seems to be the one that was then known as the squeeze bottle.

[fol. 1988] Q. Did Owens-Illinois ever go into the squeeze bottle business?

A. No, sir.

Q. Is it in it today?

A. No, sir.

The Court: Mr. Rairdon, as I understand it, Owens-Illinois presently has a division which makes plastic containers?

The Witness: Yes, your Honor.

The Court: And what are those plastic bottles? Will you define it in very general terms?

The Witness: Your Honor, we would term them rigid or semi-rigid containers as against the very squeezable bottle made out of the other types of polyethelene.

The Court: And as I would call it, am I correct in this, that you make at the present time a very general line of those bottles?

The Witness: It is, I would say, relatively a general line for bottles.

The Court: For bottles?

The Witness: Yes.

The Court: And you make plastic jars, too, do you?

The Witness: Some, yes, sir.

[fol. 1989] By the Court:

Q. And not in very large proportion—

A. Not as large as the bottle, the narrow-neck bottle.

The Court: All right.

By Mr. Johnson:

Q. You do make plastic vials, do you not?

A. Plastic vials, largely polystyrene, yes.

Q. Looking at Exhibit G-244, there is a reference in there, is there not, to the possible purchase of Plax Corporation?

A. Yes, sir, by Mr. Carr.

Q. Did there come a time when Owens-Illinois made a substantial investment in Plax Corporation?

A. Yes, sir.

Q. And acquired half of the outstanding stock of Plax Corporation, did it not?

A. As I recall, it was approximately that.

Q. And that acquisition was cleared by the Department of Justice, was it not?

Mr. Greenberg: Your Honor, I am going to strenuously object to that question. It is a question of law and I strenuously object to it.

The Court: I will overrule your objection. That is not to say the fact that they were cleared by the Department of Justice necessarily has any significance to me at all.

Q. Was it?

A. I have no specific knowledge as to that, Mr. Johnson.

Q. You were vice-president of the corporation in 1954, were you not?

A. Yes, sir.

Q. And you say you don't know?

A. I was not involved in the acquisition of the Plax business nor in its carrying out.

Q. Not even to the extent of knowing of negotiation with the Department of Justice?

A. That is correct.

Mr. Johnson: Mr. Clerk, would you mark this document for identification.

(Marked Defendants' Exhibit L for identification.)

Mr. Johnson: Defendants' Exhibit L for identification is a copy of a letter dated February 19, 1954, signed by Stanley M. Barnes, Assistant Attorney General of the United States Department of Justice, addressed to Fred E. Fuller, Esq., Toledo, Ohio.

The Court: Show it to Mr. Greenberg.

[fol. 1991] Mr. Johnson: Does the Government stipulate that that is an accurate copy?

Mr. McManus: We so stipulate.

Mr. Greenberg: We stipulate that this is a true and accurate copy of the letter of February 19, 1954.

Mr. Johnson: I offer it.

The Court: Let me see it, please.

(Document handed to Court.)

The Court: Any objection?

Mr. Greenberg: Your Honor, may we have the grounds for the offer of this document?

Mr. Johnson: A number of documents have been offered in evidence here purporting to show the interest of Owens-Illinois in the plastics business from 1950 to 1953. Subsequently Owens-Illinois acquired an interest in Plax Corporation, which is the largest plastic bottle manufacturer in the United States, and did so without objection from the Department of Justice.

The Court: And what do you say is the significance of that, Mr. Johnson?

Mr. Johnson: The significance of that—

The Court: In this case.

Mr. Johnson: The significance of that in this case is [fol. 1992] that apparently the Department of Justice concluded that there were no anti-competitive effects in that acquisition and consequently I say that no inference of any kind should be drawn from the fact that Owens-Illinois was at that time concerned with the plastics business.

The Court: Well, I would take the letter and overrule the objection, but I am frank to say to you, and I would be less than frank if I did not say to you, that I scarcely draw from the letter any of the conclusions which you have stated. But, in any event, it is in evidence, and there it is.

(Defendants' Exhibit L for identification received in evidence.)

By Mr. Johnson:

Q. Just to clarify one point, Mr. Rairdon, you were talking about the type of plastic bottles now made by Owens-Illinois. Are the narrow-neck plastic bottles which Owens-Illinois now makes made entirely from linear polyethylene, the high-density polyethylene?

A. To my knowledge, the plastic bottles we make are made from high-density polyethylene. The vials we make are made from polystyrene largely. That might not be [fol. 1993] in totality.

Mr. Johnson: That is all I have, your Honor.

The Court: Does your company still have the stock interest you described in Plax Corporation?

The Witness: We do not, sir. I cannot tell you when it was sold.

The Court: Can you tell me approximately when it was acquired? I presume it was acquired somewhere around 1954, isn't that true?

The Witness: Honestly, sir, I cannot—

The Court: You just do not know?

The Witness: I couldn't answer as to either date.

The Court: Could you tell us whether you disposed of your interest, your company disposed of your interest in Plax within the last two years?

The Witness: If I were to guess, sir, I would think it would have been in 1957.

The Court: In 1957?

The Witness: But I am not—

The Court: All right, I just wanted to get a general estimate.

Mr. Greenberg: May we have just a moment, your [fol. 1994] Honor?

The Court: Yes.

(Pause.)

Mr. Greenberg: Your Honor, if it is of interest to you, we can present to your Honor memoranda and letters which dealt with the acquisition of the Plax Corporation by Owens-Illinois. They purchased the stock and—

The Court: I am not interested in the details, Mr. Greenberg. All I was trying to do was to get a relatively accurate or a reasonably accurate time sequence and that is all.

Mr. Johnson: Your Honor, there was some testimony from Plax Corporation in the record.

The Court: On this subject?

Mr. Johnson: Yes, on this subject.

The Court: All right. Is there anything further now from Mr. Rairdon?

Mr. Greenberg: Your Honor, the Government has no further questions or any further documents to cover with the witness.

The Court: Nothing further from the defendant?

Mr. Johnson: No, your Honor.

[fol. 1995] The Court: Thank you very much, Mr. Rairdon, you may step down.

(Witness excused.)

Mr. Pettit: Your Honor, the Government calls Mr. Drigot.

[STANLEY W. DRIGOT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Drigot, by whom are you employed?

A. Continental Can Company.

Q. How long have you been employed by Continental Can Company?

A. Approximately nine and one-half years.

Q. Do you recall, sir, what your duties were during the year 1957?

A. In 1957—

Q. To be more specific, during the month of December, 1957?

A. At that time I was working in the container research division of metal research and development.

Q. What were your duties in that position?

A. Research development, investigative work on projects assigned by my superior.

Q. Mr. Drigot, I would like to show you Government's Exhibit No. 446 for identification and ask you if you recall this report?

A. Yes, I do.

Q. Did you prepare this report?

A. Yes.

Q. Was it in the course of your regular duties to prepare reports of this type?

A. Yes.

Mr. Pettit: Your Honor, the Government offers this document in evidence for all purposes.

The Court: Well, let me ask a couple of questions here: I take it that these tests that are referred to here— did you make the tests yourself?

The Witness: Yes, sir, I did, your Honor.

The Court: This is testing that you yourself did?

The Witness: Yes, sir.

The Court: And this represents the results of your testing?

The Witness: That is right.

The Court: And you made certain recommendations also and those are your recommendations?

[fol. 1997] The Witness: That is correct.

By the Court:

Q. You outlined here the procedure?

A. That is correct.

Q. Is that a fair statement of the procedure you followed in making this test?

A. It is.

The Court: Very good.

Mr. Johnson: Your Honor, the Government has stated that they are offering this for all purposes, but that leaves me uncertain as to what—

The Court: Yes, what is the purpose of this?

Mr. Pettit: Your Honor, this document deals with carbonyl compounds—Schlitz Beer, and also in the body—

The Court: Yes, I see that this deals with carbonyl compounds—Schlitz Beer, but I think that the first thing you should tell me is what carbonyl compounds—Schlitz Beer has to do with this lawsuit.

Mr. Pettit: Well, not directly, your Honor, but I would say this. This generally shows, and, in fact, the first sentence shows that the Continental Can Company was concerned with the considerations of beer packaged in cans as against beer packaged in glass. One of the considerations [fol. 1998] that they were worried about was the volatile carbonyl content of beer packed in cans as opposed to beer packed in glass.

These are offered to show that concern. The first sen-

tence in the report will show that and also the first sentence under "Conclusions."

The Court: All right, I think I have it. Do you?

Mr. Johnson: I have a few questions.

The Court: All right.

Cross-examination.

By Mr. Johnson:

Q. Mr. Drigot, do you recall who asked you to prepare this report?

A. Mr. Brachle, who was manager of the container research at that time, requested me to prepare that report.

Q. Was he your superior at that time?

A. He was.

Q. Do you recall whether he told you the purpose of making this study?

A. Yes, the purpose of making the study was to determine if there were—if we could identify the differences in these two containers, namely, glass and cans.

Q. Had American Can Company at this time recently [fol. 1999] come out with a new beer can or had you heard that they were coming out with a new beer can?

A. The information given to us by our top management was that—the metal research development information—was that American Can was about to introduce a can with an interior lining which would be very close to or similar to or actually composed of glass or a glass-like material.

Q. Did you at that time ever see such a can?

A. No.

Q. And is it fair to say then that the purpose of this report was to determine what would be the nature of this American glass-lined can that you had heard about?

A. That is right.

Q. To determine something about the quality of glass cans?

A. As it affected the product.

Q. As it affected it?

A. Yes.

Mr. Johnson: Your Honor, I object to this.

The Court: On what ground?

Mr. Johnson: Well——

The Court: Now, look, Mr. Johnson, I will overrule the objection.

[fol. 2000] Mr. Johnson: All right.

The Court: It talks about bottles and cans and the competitive story and qualities of each, and it certainly has some relevance to the general subject matter.

Mr. Johnson: The testimony is clear, I think, that it relates to a beer can——

The Court: First let me ask this:

Mr. Witness, you tested the volatile carbonyl content of Schlitz Beer after it was packed in cans, did you?

The Witness: Yes, sir.

The Court: You also tested it after it was packed in bottles?

The Witness: That is right.

The Court: And you made a comparison of the two, didn't you?

The Witness: Yes.

The Court: And that is what you were doing in making this report, wasn't it?

The Witness: Yes.

The Court: All right.

(Government's Exhibit 446 for identification received in evidence.)

The Court: Is there anything further from this witness? [fol. 2000A]

Mr. Pettit: No, your Honor, that is all.

The Court: All right, sir, you may step down. Thank you.

(Witness excused.)

[fol. 2001] The Court: We will make an announcement on the record with respect to the correction in the announced exhibit number, so that everybody may make note of it and correct their records accordingly.

The Clerk: With respect to the letter of February 19th, the correction should be defendants' Exhibit M in evidence.

The Court: That is the letter from the Department of Justice.

The Clerk: To Mr. Fuller.

The Court: Next witness.

Mr. Pettit: Your Honor, we call L. C. Dudley, and in connection with his testimony we will be referring to 415-B, Government's Exhibit 415-B for identification.

LAUREN C. DUDLEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pettit:

Q. Mr. Dudley, by whom are you employed?

A. The Duncan Coffee Company.

Q. Previous to your employment with the Duncan Coffee Company, by whom were you employed?

A. The Continental Can Company.

[fol. 2002] Q. For what period of time, sir?

A. Oh, from February of 1948 until April of this year.

Q. Do you recall what your employment duties were with Continental Can Company in April of 1953?

A. Yes.

Q. You do?

A. Yes.

Q. Mr. Duncan, I show you Government's Exhibit 415-B for identification, and ask you if you recall this exhibit?

A. Yes, I seem to recall it as a group.

The Court: Mr. Dudley, try to keep your voice up. Mr. Hughes, Mr. Handler and these other gentlemen have to hear you.

The Witness: Yes.

A. As a combined group. When I say "combined group" I mean this whole section here.

Q. Did you say this was prepared—

The Court: You too, Mr. Pettit. You have got to be heard down there.

Mr. Pettit: I will project, your Honor.

Q. Was this prepared by the Commercial Research De-

partment, do you recall, or was this—you did say that you [fol. 2003] worked in Commercial Research?

A. No, no, I was in the products sales department.

Q. I see. Was this prepared in the products sales department?

A. Yes, it was compiled in my office.

The Court: What position did you say you had in the products sales department at that time?

The Witness: I was the product sales manager for processed foods.

Q. This was prepared under your direction, I believe you said?

A. Yes. I say compiled. It was really a resume of several studies and also, I would say, quite a few files.

Mr. Pettit: Your Honor, the Government would offer this 415-B in evidence for all purposes, also.

The Court: You may examine concerning it, Mr. Johnson.

By Mr. Johnson:

Q. Mr. Dudley, would you look at the first page of material, actually the third sheet in this exhibit. There is a reference in there, in the second paragraph, to a baby food [fol. 2004] survey which was conducted apparently in 1945; do you know anything about that survey?

A. Nothing other than it was conducted, and I had, I believe, access to it.

Q. Did you prepare it?

A. No.

Q. Did you conduct the survey?

A. No.

Q. Did you have any part in either formulating the questions or in determining where the survey was to be made?

A. No. As a matter of fact, that was prior to my coming with the company.

Q. But the survey had all been done before you ever came to Continental?

A. Yes.

Q. And you picked up a finished survey and drew some conclusions from it; is that true?

A. Yes.

Q. A statement is made at the bottom of that page, "Campaign was conducted in cooperation with Gerber, Clapp, CMI and Continental Can Company."

Where did you get that information?

A. I believe that it was in the file that I had at the time, or was able to get out of the old file.

[fol. 2005] Q. But you did not learn that of your own knowledge, because you were not with the company at the time that was made?

A. No, I was not.

Q. Were you ever an officer or director of Continental?

A. No.

Q. Do you know whether this document ever circulated outside of Continental, was ever distributed outside of Continental?

A. No, I don't.

The Court: What circulation did the document have, if you remember, Mr. Dudley?

The Witness: Well, in essence, it was a compilation compiling material to get approval for the final page, or last page, from my immediate superior at that time to go ahead with some work.

The Court: What were you trying to get approval for?

The Witness: Well, as shown in the conclusions, there were certain research and development that would have to take place in the cans; and I was attempting to get, in effect, budget for it, or approval for it.

[fol. 2006] The Court: Did you get it?

The Witness: Yes, sir.

The Court: Did you carry out the project along the general line you recommended here?

The Witness: I would say generally, yes.

The Court: Generally.

All right.

Mr. Johnson: Your Honor, in view of the fact that this document is offered for all purposes, I submit that it is inadmissible. There is a great deal of material obtained from unknown sources, from material that was not in this witness' knowledge; hearsay of many kinds, including a statement I see here, statement from the Council on Foods and Nutrition of the American Medical Association.

The document is full of hearsay. It is not admissible under any of the standards that have been set up with respect to the admissions of surveys, and I object to it on all of those grounds.

The Court: Objection overruled.

(Government's Exhibit 415-B for identification received in evidence.)

The Court: Anything further?

Mr. Pettit: No, your Honor.

[fol. 2007] The Court: All right, Mr. Dudley, you may step down.

Thank you.

The Witness: Thank you.

(Witness excused.)

Mr. McManus: Your Honor, I would like the advice of the Court. Our next witness is quite a lengthy witness and covers a number of subjects. I don't know if you want me to start with this witness now or break for lunch now and start with him at an earlier time or not.

The Court: I think we might as well call him now and go along for 15 or 20 minutes, get his qualifications and background, and if you find a convenient point at which you think we might break, you advise me.

Mr. McManus: Fine, sir.

Government calls Mr. Cheney.

[fol. 2008] RICHARD L. CHENEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. McManus:

Q. Mr. Cheney, by whom are you presently employed?

A. The Glass Container Manufacturers Institute.

Q. That is located here in New York City?

A. Yes, sir.

Q. What is your position with that company?

A. I am executive director and marketing manager.

Q. Now, Mr. Cheney, if we could go over your background, starting with your graduation from college, if we could?

A. I graduated MIT in 1927. I worked with the Hobart Manufacturing Company of Troy, Ohio, as an engineer, a field service man, direct sales advertiser, salesman and assistant sales manager.

Q. And from there?

The Court: What do they manufacture?

The Witness: Electrical food preparing machinery.

Q. And from there you went?

[fol. 2009] A. From there I went to work for Stevenson, Jordan & Harrison, management engineers, at their San Francisco office, and in 1939 I went to work for the Purchasing Agents Association of Northern California as executive secretary and editor and publisher of Pacific Purchasing Magazine, Pacific Purchasing.

Q. Now, if I could interrupt you? You said that Stevenson, Jordan & Harrison were management engineers. What type of work was that that you did?

A. The work I did for them was largely in association management. They managed a number of associations.

Q. Trade associations?

A. Trade associations, yes, sir.

Q. And after you left the editor and publisher of—

A. I became West Coast manager of Glass Container Association.

Q. And that would be from what period?

A. That was from 1940 to the end of 1944. Then I joined Safeway stores, as a manager of food container buyers division, and in April 1946 I became [fol. 2010] West Coast manager of Glass Container Manufacturers Institute, which position I held until January 1st, 1954, when I came to New York as director of market research and promotion.

Q. And you held that job until?

A. Until I think it was May, April or May of 1957, when I became executive director and marketing manager.

Q. Now, you said you worked a year and a half with Safeway in the food container buyers division?

A. That's right.

Q. And what was your job at that time?

A. I bought or supervised the buying of packaging materials for the various packing operations of Safeway stores.

The Court: Safeway then conducts its own packaging operations, puts out its own brands in some instances?

The Witness: That is correct, yes, sir.

Q. Now, you indicated that you at one time worked for the West Coast division of Glass Container Manufacturers Association; how many offices does GCMI have?

A. We have the main office in New York, the [fol. 2011] West Coast office in San Francisco, an office in Washington, D. C. and a laboratory with an office at Michigan State University, at East Lansing, Michigan.

Q. Does the West Coast office do the same general type work for that area that the New York office does for the rest of the country?

A. I think it is correct to say that the broad scope of the GCMI activities as they apply in that area are handled by that office or through that office.

Q. And what is the purpose of the Washington, D.C. office?

A. For contact with Government agencies.

Q. Now, could you estimate approximately the percentage of industry represented by GCMI members, if we did it on, let's say, a unit basis, unit number of containers?

A. Yes. On a unit basis, approximately 85 per cent of the glass manufacturers are members of GCMI in this country.

Q. If you did it on a dollar basis, would it be any different?

[fol. 2012] A. I think it would. I have no way of—if I could put it on the basis of physical units produced?

The Court: Yes.

Q. Yes.

A. It would be approximately 92 per cent.

Q. And how many companies are members of GCMI as glass container manufacturers?

A. 36 companies.

Q. Do you also have members who are not manufacturers of glass containers?

A. Yes, sir. We have six members who manufacture closures for glass containers and 20 members who manufacture raw materials or supplies or molds and equipment.

Q. Do you happen to know the companies, how many companies are not members of your association?

A. I don't know exactly. I know some who are not.

Q. Who are the companies that you know of that are not members of your association?

A. Glass container manufacturers?

Q. Glass container manufacturers, yes.

A. There is Star City Glass Company, with its subsidiaries, Gayner Glass and Universal. There is Wheaton Glass Company and the T. C. Wheaton Company. There is Kerr Glass Manufacturing Company and Alexander H. [fol. 2013] Kerr Company.

There is Underwood Glass Company, New Orleans. The Arkansas, I think it is called Arkansas Glass Company. It is a manufacturer of glass containers located in the State of Arkansas.

There was a company in Minneapolis, whose name I don't recall. I believe they are closed down at present. And there is the Gallo, a wholly-owned subsidiary of the Gallo Wine Company. I think they call it the Gallo Glass Company. That is all I can think of now.

Q. Could you tell me what are the requirements for membership into GCMI?

A. Membership is open to those who manufacture and sell glass containers and closures, or raw materials or supplies, supplies used by the glass container or closure manufacturers, except for jobbers.

Q. And could you tell us, tell the Court generally, how the Association is organized? What is the hierarchy in the organization?

A. Well, the governing body is the board of trustees, made up of eleven individuals who are employees of members. The board of trustees elects a president, first

[fol. 2014] vice-president and second vice president from its own membership. All of these serve without compensation. The paid staff totals about 45, and I am executive director, the head of the paid staff. We have an operating committee of three people, and then the rest of the staff reports to one of us three.

Q. And you do have regular standing committees?

A. Yes. We have nine regular standing committees and quite a large number of subcommittees.

The Court: Do you assign various members of your staff to the subcommittees?

The Witness: Yes, sir.

The Court: In other words, I take it, individual staff members may be permanently or semi-permanently assigned to a subcommittee to specialize in this work; is that your practice?

The Witness: That's right; yes, sir.

By Mr. McManus:

Q. Now, if we could, could you tell us what these committees are and explain generally the duties or the purpose of the committee?

A. Well, there is the Market Research and Promotion Committee, whose purpose is to do market research, advertising promotion, public information, publicity.

The Traffic Committee, which is to promote equitable freight rates, both rail and truck, for glass containers and for glass-packed products.

There is a traffic—there is a Labor Relations Committee, which has charge of negotiating two national contracts with two labor unions. I was assisting up to a point the individual members in their further negotiations on an individual company basis.

There is the Container Design and Specifications Committee, which develops recommended standards for glass containers.

There is the Standard Finishes Committee—I can't just recall the name—the finish of a glass container being that portion to which the closure attaches—and they develop recommended standards for finishes for glass containers.

There is the Panel Design and Specifications Committee, which conducts or operates a laboratory, a packaging laboratory, located on the grounds of Michigan State University, which has the purpose of developing more efficient, less costly packaging materials, by which I [fol. 2016] mean corrugated shipping containers and interior packing, or small six-pack carriers—other things of that kind.

There is the Standard Testing Procedures Committee, which develops standard testing procedures and quality control materials in the area of glass container manufacturing.

There is the Technical Committee on glass packed products, which has subsidized programs at the University of Massachusetts and the University of California, whose duty is to conduct research and investigation and foster the use of methods for packing products in glass containers.

Did I name nine?

Q. I believe you have, yes, sir. And of course, there may be occasionally subcommittees set up under these various standing committees?

A. Yes, sir.

Mr. McManus: Your Honor, I would think that this might be an appropriate time to take a break, if that is satisfactory?

The Court: All right, we will take a recess now until five minutes after two.

(Recess to 2.05 p.m.)

[fol. 2017]

AFTERNOON SESSION

RICHARD L. CHENEY, resumed.

Mr. McManus: Your Honor, if you have no objection, Mr. Andrews of our staff, who is a member of the Bar of the State of Utah, would like to sit at counsel table.

The Court: That will be fine. We welcome Mr. Andrews.

Direct examination continued.

By Mr. McManus:

Q. Mr. Cheney, when I asked you to list the nine committees that you had in GCMI, on double-checking I understand that you listed eight. Would you tell me what No. 9 is?

A. No. 9 is the Government-Industry Relations Committee. That committee carries on our work, liaison work, between Federal, State and local governments, where we have mutual problems or interests.

Q. Is that one of the reasons why you maintain an office in Washington?

A. That is, yes, sir.

Q. Now is your company also engaged in the collection of statistics from member companies?

A. Yes, it is.

Q. And when I say "member companies," would those [fol. 2018] be glass container manufacturers?

A. Just the glass container manufacturers.

Q. And on what basis do you collect these statistics, is it on a unit basis or a dollar basis or what?

A. It is on physical volume measured in gross, the gross being 144 or 12 dozen.

Q. Are these reports broken down in any manner?

A. Yes, they are broken down in certain end use categories.

Q. And could you tell me what those end use categories would be, if you recall?

A. I may not be able to recall them all.

The Court: How many are there?

The Witness: About 14, I believe.

The Court: All right.

A. They are divided into two groups, narrow-neck glass containers and wide-mouth glass containers.

Under narrow-neck there are foods, drug and health supplies, toiletries and cosmetics, beverages, so-called soft drinks, returnable soft drinks and non-returnable, beer returnables, beer non-returnables, household and industrial chemicals.

Wide-mouth are broken down under foods, toiletries [fol. 2019] and cosmetics, health and medicinal, household and industrial chemicals. And then there is dairy containers separately. Those are all that I recall.

Q. And do you collect these statistics from member companies monthly or annually?

A. Monthly.

Q. Do you make annual compilations also?

A. Yes, we do.

Q. When you get these statistics, do you add them into one group?

A. We compile them into one total for the whole industry and send out reports to the members covering the whole industry's figures. We keep their reports. If they send them to us, we do not return them.

[fol. 2020] Q. It is also necessary in dues collection to obtain statistics on a dollar basis from your member companies?

A. Yes. Once a year all members report their dollar sales for the previous years, and it is on these figures that their dues are calculated.

Q. And that would be on a percentage basis of their total sales?

A. That is correct; yes, sir.

Q. So depending on the amount of sales would depend the amount of dues; is that correct?

A. That is correct.

Q. Now, could you tell me what is the purpose of GCMI?

A. Well, the purpose of GCMI is to advance the interests of the glass container and closure manufacturing industries and those of their customers and the public through activities that will improve the production methods of our products, through setting up recommended standards which will be for the benefit of the consumers, the users and consumers, and through the other efforts that I outlined under the nine standing committees, to increase the efficiency in industry and increase the market for glass containers and closures.

[fol. 2021] Q. In your present position, what are your duties and responsibilities to the Association?

A. Well, they are twofold. As executive director, I

am the chief executive officer and supervise all the activities of the Institute. And in my capacity as marketing manager, I have charge of the market research and promotion department, which carries on or has carried on for it market research, advertising, publicity, public information service, merchandising promotion.

Q. Is it necessary in your job to travel around the country?

A. Yes, it is.

Q. And for what purposes do you go around the country? What are your duties in connection with that?

A. I travel around the country to call on our members. I sit occasionally in meetings of our West Coast subcommittees; to make talks to associations of users of glass containers and to other people; to occasionally contact users of glass containers, to obtain their opinions and information about glass containers. I think that is it.

Q. In the other part of your duties, or one of [fol. 2022] the parts of your duties of market research, do you keep yourself advised of statistical data from Government agencies or other trade associations?

A. Yes, where it is available and applicable to packaging products that we are interested in, I do.

Q. And do you keep yourself advised of trends in the glass container industry, improvements and increase in sales or decrease in sales? Do you keep yourself advised of that?

A. Yes, I do.

Q. Do you also attempt to keep yourself advised of other types of containers in the overall packaging industry?

A. Yes, as far as I can.

Q. Under your market research and program committee, does that committee makes surveys and studies of the glass container industry?

A. It has surveys made and studies made, which they review.

Q. And you are familiar with them?

A. I am.

Q. And once these studies and surveys are made, what distribution do you make of them?

[fol. 2023] A. It depends on the study and who might be

interested in it. One type of study is presented orally at our semi-annual meetings with slides. Then copies are sent out to the glass container and closure members of the industry, and others if they are interested. Certain others might be sent to those companies which manufacture containers for certain end uses, if that is what the study pertains to.

Q. Are these studies available to your members at any time?

A. Yes. We handle them on a library loan basis. We have a quantity of copies available, send them out and they return them to us. But they are available at any time.

Q. Now, the promotion end of the market research and promotion part of your job, what does that entail, Mr. Cheney?

A. That includes, of course, advertising. We have a consumer advertising program, which this year is a heavy schedule in Life magazine. We merchandise this program through direct mail to bottlers, packers, retailers, distributors, who might be interested in glass packed products. [fol. 2024] We carry on a trade paper advertising program in the leading—what we believe to be the leading—retail food trade magazines, and in Glass Packer magazine, which goes to many people who pack in glass.

Q. So your promotional program is twofold:

It is aimed both at the person who is going to fill the container and also at the ultimate consumer who will use the product; is that correct?

A. And in addition to that, to the retailer, who sells the glass-packed product—threefold.

Q. The stores themselves.

A. Yes.

Q. Threefold program.

A. Yes.

Q. Could you tell me how these surveys are initiated, the background for these market research surveys, that you have heretofore mentioned? How are they initiated in GCMI? What is their plan?

A. It varies as to the type of the survey. Do you have a particular survey you want to mention?

Q. Well, you say you have a general survey, and you

indicated one of them you discussed with the members annually or semi-annually.

A. Yes.

[fol. 2025] Q. What type would that be?

A. That is a national consumer attitude survey, and at the same time we take that, on alternate years we survey a sample of retailers or some other group that we might be interested in, and this survey is authorized each year by the Market Research and Promotion Committee. It has been a continuing activity since 1955.

Q. And the Market Research and Promotion Committee is made up of glass container manufacturers who are members of your Association?

A. There is a representative—I think there are 13 members on the committee at present, and the members of the committee are executives of glass container manufacturers.

Mr. McManus: Now, your Honor, I would like to refer to Government's Exhibit 33.

Mr. Hughes: Wait just a moment, your Honor.

The Court: Yes.

Mr. Hughes: May I say, your Honor, that there are 132 exhibits involved, so that at times, especially if Mr. McManus skips around, we may not be quite up to them.

The Court: All right.

[fol. 2025a] Well, now, let me ask you at the outset of this discussion, is there any way of grouping these documents so as to fit into any general categories, so that we could save time, or must they each be taken up individually?

[fol. 2026] Mr. McManus: Your Honor, many of these surveys—many of these documents—I should not say surveys—are quite different, and it would seem to me that it would be very difficult to take them up as a group. If as we go along we do find that possible—

The Court: I think that any intelligent grouping that can be made will save an enormous amount of time.

Mr. McManus: Yes, I understand that.

The Court: I wish that all of you would bear that in mind in case at any point it becomes possible to do that, because we are going through 130 exhibits with this witness.

Mr. Hughes: I think that it is usual to start with No. 1.

The Court: Yes, let us start from the beginning and see what problems we will have.

Mr. McManus: Your Honor, actually the earlier parts refer more or less to the later surveys and I would think that it would be more practical if we could start with the first survey, start with 33, and that is the reason we would like to start with that.

The Court: All right.

[fol. 2027] By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit G-33. Do you recognize that survey?

A. Yes, I do.

Q. This was delivered on December 1, 1953, according to the date here. What was the purpose of this survey, would you explain that?

A. G-33 is the introduction to a complete survey. It is not a survey in itself. There are several exhibits here that were all part of that one survey.

Mr. Hughes: Your Honor, may I interrupt to point out that the Government for some reason, which is obscure to me, took a single document and broke it up into about ten different segments. When we are dealing here with Exhibit 33 to about 40, I think it is, it is really all one document.

The Court: What are the numbers now?

Mr. McManus: Just a minute, your Honor. We can cover them all at once on this.

It runs, your Honor, from G-34 through G-38.

Mr. Hughes: G-33.

Mr. McManus: Excuse me, G-33 through G-38.

The Court: The document which is G-39 for identification [fol. 2028] talks of a plan of action for the glass container industry. I take it from what you say that that is not a part of this document but it is a separate document?

The Witness: Yes, sir. They have a plan.

Mr. Hughes: Isn't G-40 also part of this document?

The Witness: We don't have G-40 here.

The Court: Let me see G-40, please.

(Document handed to Court.)

The Court: G-40 must be part, presumably, of either G-39 or G-38.

Mr. McManus: G-33 to G-38, your Honor, and G-40. We have an additional copy here: Could we give it to your Honor?

The Court: Well, I have it here before me. Presumably it is in the bound exhibit file.

Mr. McManus: Yes, sir. What happened was, in photostating, your Honor, they came back disassembled and we did not have the original to put them back in the proper order and we apparently put them back together this way.

The Court: We are dealing now with 33 to 38, exclusively?

[fol. 2029] Mr. McManus: And also G-40.

The Court: Also G-40 but not G-39?

Mr. McManus: That is correct.

The Court: All right.

Q. Now could you explain to his Honor who decided to make this survey?

A. The board of trustees decided to make this survey.

Q. And at that time what was your position?

A. West Coast manager.

Q. Did you participate in the organization of this survey?

A. Yes, I had charge of the survey.

Q. And in the foreword it outlines the purpose of the survey and your participation in the survey, is that correct?

A. Both paragraph No. 1 and paragraph No. 2, yes.

Q. That explains the—

A. The purpose.

Q. The purpose of the survey and your participation in the survey?

A. My participation is covered by the next following paragraph.

Q. And what distribution was given to this survey? [fol. 2030]

A. The results of this survey were given first to a five-man steering committee that had been guiding us through the work, and then to the market research and promotion committee, then to the board of trustees through charts and oral presentation.

The board of trustees then decided that it should be given to our membership, and on December 1, 1953, it was given to the full membership at the meeting. Charts and printed copies, one of which we have here, were handed out one to a company at that time.

Q. I see. Is this one of the surveys that would be on a library loan basis for your members?

A. No. Numbered copies were recorded out to them but they could keep them. They did not return them.

Q. And that is the reason why on the first page here it is copy No. 159 for confidential use?

A. That is correct.

Q. These were not distributed to people who were not members of your association?

A. No, sir, they were not.

Q. If we can turn over to "What is happening in the over-all packaging industry," it says there "Packaging, [fol. 2031] a 9 billion industry." Can you tell me the basis of that chart, Mr. Cheney?

A. This was prepared by Mr. Sammis whom I engaged to help me in the study, and he obtained the information for this chart from a study prepared by the McGraw-Hill Publishing Company.

Q. And there is an indication here that part of it was prepared from the Division of Interindustry Economics, Bureau of Labor Statistics?

A. The McGraw-Hill Publishing Company study stated that the data for 1947 and 1951 were from the Division of Interindustry-Economics and they quoted that data within their reports.

Q. And the second chart, "Expanding of the Packaging Market"—

Mr. Hughes: When you speak of the second chart, what exhibit are you referring to?

Mr. McManus: Page 3.

Mr. Hughes: The one on page 3?

Mr. McManus: Yes, the one that is on page 3.

Q. Do you know the basis for that chart, Mr. Cheney?

A. Yes, that chart plots from the year 1939 to the year 1952, based on an index of 1939 equals one hundred, the [fol. 2032] early forms of corrugated shipping containers in thousands of square feet of board.

Q. What is the purpose of the chart on page 4?

A. The purpose of the chart on page 4 is to compare the trend line of shipping containers, which we accepted as a best possible measure of the trend of the total packaging market, with the trend in consumer disposable income in 1939 dollars and with the trend in population.

Q. Now, the chart on page 5, what is the purpose of that one?

A. The purpose of this chart is to show in graphic form the breakdown of the total packaging industry in the year 1952 from the McGraw-Hill estimates by categories, and to show particularly that glass containers represented a per cent of it.

Q. And the chart on page 6, what is the purpose of that chart?

A. The purpose of that chart is to show in graphic form the fact that—because of the fact that many glass containers are returnable, are used many times, such as milk bottles and soft drink bottles and returnable beer bottles, by reason of that 71 billion glass packages went to the [fol. 2033] market in 1952 as compared, for example, to 33 billion packages in metal cans.

Q. And what about the chart on page 7?

A. That plots in gross, in physical units again, on the basis of an index of 1939 equals one hundred, the early forms of glass containers, and shows that shipments of glass containers are growing faster than the population and the consumer income?

Q. And the chart on page 8?

A. The chart on page 8 plots certain broad end use categories of glass containers, shipments of glass containers for those broad end use categories, and again compares the several categories to the original trend line.

Q. Then you come to a section of what has been happening in the glass container industry starting at page 9—

A. Page 10.

Q. Excuse me, page 10. What is the basis for this chart? Where was the information for this chart obtained?

A. The information for this chart was obtained from the Department of Commerce figures showing annual shipments of glass containers and it shows the three years,

[fol. 2034] 1941, 1944, and 1952, in box chart form; showing major end use categories.

Q. And the chart on page 11, what is the purpose of that chart?

A. The purpose of the chart on page 11 is to show the long range trend and shipments year by year from 1929 to 1952 of glass containers.

Q. And the one on page 12 would be the same except that it is for narrow-neck foods?

A. Yes, for narrow-neck foods.

Q. And the one on page 13 would show the trend for wide-mouth foods?

A. It shows annual shipments, yes, for wide-mouth foods.

The Court: Where do those figures come from?

The Witness: From the Department of Commerce.

The Court: They are Department of Commerce figures?

The Witness: Yes, sir.

Q. And that would be true for dairy products on page 14?

A. Yes, sir.

Mr. McManus: Your Honor, we have no desire to offer [fol. 2035] and we are not going to offer page 15.

The Court: Let me see what 15 is.

Mr. McManus: It is home canning jars, your Honor. If you would like us to put it in—

Mr. Hughes: Would you tell me to what page of what exhibit you are referring?

Mr. McManus: Page 15.

Mr. Hughes: Among your exhibit numbers, what page of what exhibit is this?

The Court: As I understand it, it is page 15 of Exhibit 33, Mr. Hughes.

Mr. McManus: That is right.

Q. And page 16, Mr. Cheney, is—

The Court: You are excluding from your offer the chart on 15?

Mr. McManus: Yes, sir.

The Court: Why is that? We have such a comprehensive purported survey here that it does not seem to me

that it is going to pay very much to eliminate the material on this one.

Mr. McManus: All right, your Honor. I have no objection to putting it in. So we will offer that with the rest of the document.

Q. The chart on page 16 shows glass container ship-
[fol. 2036] ments in toiletries and cosmetics and medical drugs?

A. Right.

Q. What is the difference—

The Court: These are Department of Commerce figures again?

The Witness: Yes, sir.

Q. And what is the difference in the chart on page 17?

A. The chart on page 17 is to break down toiletries and cosmetic containers between narrow-neck and wide-mouth.

The Court: Those are Department of Commerce figures again?

The Witness: Yes, sir, related, as you understand, to the index of 1939 equals one hundred.

Q. Is the chart on page 18 from Department of Commerce figures?

A. Yes, sir.

Q. And that is for medical and drug containers?

A. It is.

[fol. 2037] Q. Now, the chart on page 19, Department of Commerce figures?

A. Yes, sir.

Q. And this is the same type of chart except for beer bottles?

A. That's right.

Q. And the chart on page 20; is that the Department of Commerce figure?

A. Yes, sir.

Q. And that is for carbonated and non-carbonated beverage bottles?

A. Yes, sir. May I add something? On a number of these charts the per capita figure is shown, and in order to arrive at the per capita figure we use census population figures.

Q. I see.

A. It is also part of the Department of Commerce.

Q. Now, the chart on page 21 is for wine and liquor bottles; correct?

A. Yes, sir.

Q. And that is from the Department of Commerce?

A. Yes, sir.

Q. 22, Department of Commerce?

A. Yes, sir.

[fol. 2038] Q. For chemical, household and industrial containers?

A. Yes, sir.

Q. All right. Now, could you explain the basis of the chart on page 23?

A. The chart on page 23 is a bar type of chart, designed to—

The Court: Wait a minute. Hold everything until I find it.

Mr. McManus: 35, your Honor, page 23.

The Court: I have it. Go ahead.

A. (Continuing) This chart breaks down, or doesn't break down, but this chart shows where, in those cases where we were able to obtain either actual figures of what we considered reliable estimates of the narrower classifications by end use of glass containers, such as pickles and relishes, fruits and fruit juices, baby food and so forth for the years 1941, 1944 and 1952.

Q. And then the next section is what has been happening in competitive industry?

A. Right.

Q. Now, the chart on page 25, Mr. Cheney, what is the basis of that chart?

A. The basis of that chart is the Department of Commerce figures, showing the short tons of tinplate used for manufacturing of metal cans. This data was available from the year 1940, and it is broken down between fruit cans and non-fruit cans.

The Court: By the Department of Commerce, I take it?

The Witness: Yes, sir.

Q. And the chart on page 26?

A. Shows folding paper boxes. I am sure that is the Department of Commerce. The source of all these figures are shown in the appendix, which I think is Exhibit G-40—yes, the source of this is Department of Commerce.

Q. And that shows the trend in folding paper boxes?

A. Yes, sir. That is based on dollars, because there were no figures available on physical units.

Q. And the chart on page 27?

A. The source of that is Department of Commerce, and is derived from tons of paper used in making paper mill products.

Q. And the chart on page 28?

A. Source of that, as shown on page 64, or opposite—[fol. 2040] no, on page 64—are estimates based on fragmentary data from Collapsible Tube Manufacturers Association.

The Court: I take it that as you turn to the appendix, you will find that the appendix states whether these are estimates or not, and where the figures come from?

The Witness: Yes, sir.

The Court: In each case?

The Witness: In each case so far, yes, sir.

The Court: So far.

The Witness: Yes.

By Mr. McManus:

Q. You are aware that some of them are not in the appendix, Mr. Cheney? Some of the sources are not in the appendix?

A. Not on any charts we have looked at yet.

Q. Some of the later ones might not be?

A. Some of the later ones will not be.

By the Court:

Q. Well, in those cases, do the charts themselves state what the source of the figures is?

A. I don't think so, your Honor.

Q. No.

A. Not in all cases.

[fol. 2041] Q. In other words, there are some what I

would call blind figures here; without the report stating the source?

A. Without the report stating the source, yes, sir.

Q. Yes.

A. I believe that to be true.

By Mr. McManus:

Q. And what is the basis for the chart on page 29?

A. 29, the source was 1944 and 1951 national production authority figures, and 1952 is an industry estimate obtained from the manufacturers of the raw material.

Q. This was the production of polyethylene bottles and polyethylene production itself; is that right?

A. Yes, the 1944, '51 and '52 figures were, the production of polyethylene were what I just described, and you are correct that there are no figures in the appendix on the shipments of polyethylene bottles. This is based on estimates received from informed sources in the polyethylene bottle industry.

[fol. 2042] Mr. Hughes: I move to strike out the characterization "informed sources," your Honor.

The Court: All right, I will strike out the word "informed."

Estimates received from sources, or sources that he considers to be informed.

Mr. Hughes: Well, I think that may be a totally different thing.

The Court: Yes.

Q. And what is the basis of this chart, polystyrene production, on page 30?

A. Source of this is the Tariff Commission.

Q. Federal Government?

A. Federal Government, yes, sir.

Q. And the chart on page 31, what is the purpose of that chart?

A. Purpose of that chart is to show the current shipments of polyethylene, polyethylene squeeze bottles, polystyrene, and so forth, from the preceding charts, and to show also the estimate, the estimate of Mr. Sammis and myself, our joint estimate, as to their potential in 19—yes, their potential in 1956 or '54, as the case may be.

Q. The next section is "Competition is becoming [fol. 2043] stronger."

Now, on page—back of page 32 there are some statements here, and I wonder if you can recall the basis of these statements, for instance, where you got this information about "Can Manufacturers Institute spent approximately a million dollars a year for consumer advertising"?

Mr. Hughes: What page are you on?

The Witness: Opposite page 33.

A. Mr. Sammis collected the data on this page from the registers that publish the data as to the amount of money spent for advertising by individual companies, and from personal contact with certain of the companies, and from other sources that I am not familiar with, or that I don't recall at this time.

Q. Now we go to the section "Major competition in the packaging industry."

Mr. Hughes: What page is that?

Mr. McManus: Excuse me. We are going over next to page 37.

Q. And could you tell me the basis of this chart and the purpose of this chart?

A. The purpose of the chart on page 37 is to compare several types of containers of packing materials [fol. 2044] as to their physical, chemical and other attributes, and at my request this comparison was made by Preston Laboratories.

Q. And the chart on page 38, what was the basis for that chart?

A. The basis for the chart on page 38 was a survey reported in Sales Management magazine, which Sales Management magazine itself had had made, as to the properties that housewives desire in packaging materials, and based on this survey Mr. Sammis and I jointly rated the various types of packaging materials according to their categories.

Q. Now going on to page 43, the chart on page 43—

Mr. McManus: It is Exhibit 38, your Honor.

The Court: 38.

Q. —what is the basis of this chart, Mr. Cheney?

A. The lefthand side are a list of end uses for glass containers, and the next column shows the shipments of glass containers for these particular products in the year 1952. In some cases those can be taken directly from Department of Commerce figures. In many cases, such figures are not available, and through quite an extensive and detailed exploration of all possible sources and through the exercise of our judgment based on our knowledge of this industry Mr. Sammis and I arrived at estimates for the products for which the figures are not available.

Mr. Hughes: I move to strike that part of the answer which suggests that the material came from all possible sources?

The Court: Yes, that will be stricken.

Q. And the chart on page 44?

A. Chart on page 44 is really a continuation of the chart on page 43. The other columns show where there was either active or potential competition for glass containers.

Q. And it would be obtained from the same sources as the chart on page 42?

A. Yes, sir.

Q. And the chart on page 45 is to show what, Mr. Cheney?

A. The chart on page 45 is to present our estimate of the possible loss of business by glass containers to metal cans and certain categories, using the glass container shipments as shown on pages 44 and 43.

[fol. 2046] By the Court:

Q. Now, are these estimates of possible loss or loss that you estimate is likely to occur—or is it probable loss? How do you characterize your estimates here?

A. I would characterize them as possible loss. Whether or not it would be probable would depend on the things that the industry might do or not do, and things that other people might do or not do.

Q. In other words, what you are really saying is in these estimates is that these items could be packed in cans; that is all you are saying, isn't it? Or does it go farther

than that? Does it take into account trends or anything of that nature?

A. It takes into consideration of fact they could be packed in cans: I would say that this does not take into consideration trends, except in the case of beer, but rather takes into consideration a number of factors, such as adaptability, and our estimate of what might happen to consumer preference that would bring about this shift.

The Court: All right, Mr. McManus.

By Mr. McManus:

[fol. 2047] Q. And the chart on page 46 relates to a similar chart?

A. It is of the same nature as 45, except as comparing glass to paper containers.

Q. And the one on page 47, the same type, comparing glass to metal?

A. That's right.

Q. And 48 is comparing glass with plastic, film?

A. That's right.

Q. And then the one on page 49 compares loss to plastic containers?

A. Possible loss.

Q. Possible loss. Then the chart on page 50 is a consolidation of previous charts to show possible loss?

A. It is a summary of the total possible losses shown on previous pages.

Q. Then the chart on page 51, what is the purpose of that chart?

A. The purpose of that chart is to show possible gains in—

The Court: In other words, that is the converse of the other chart, I take it?

The Witness: Exactly, yes, sir.

[fol. 2048] Q. And do you know the basis of this chart?

A. Yes. The basis of the figures in the first, or in the righthand column, present packaging, from the earlier charts that showed the present volume as we estimated in glass—I would like to correct that.

Q. Right.

A. The righthand column shows either actual figures from Department of Commerce figures, National Containers Association figures, or are estimates based on all the sources that we could think of to investigate the purpose, as to the amount of these products, or as to the number of gross of competing packing materials used to pack these products at the present time—in most cases here—cans, and in one case, paper—in two cases, paper, and then the first column shows the potential that we thought the glass industry could gain if it did the right things to gain it.

Mr. Hughes: Your Honor, I move to strike out "all possible sources" again. I didn't catch it at that time.

The Court: I don't think he put it that way. I am going to let it stand, Mr. Hughes. He didn't use the phrase, as [fol. 2049] I recall, "every possible." He simply used the phrase everything he could think of.

Mr. McManus: Now, the table, I guess we would call it, on page 57 in the appendix, I believe that is Government's Exhibit 40, your Honor.

The Court: We go now to 40, do we?

Mr. McManus: Yes, sir.

Your Honor, Mr. Cheney says that we could do these pretty well in a group. They are shipments of glass containers.

The Court: Yes.

Now, what about this group here in the table of contents, called "Shipment of glass containers"? Where do the figures come from on those?

The Witness: On page 57, sir.

The Court: On page 55 there is an index to presumably what are various charts; is that right?

The Witness: That is right.

The Court: Now, did all the figures come from the same general sources on those charts?

The Witness: As to shipments of glass containers, they did, they came from the Department of Commerce.

The Court: All right.

Mr. McManus: Then we will go over to page 63.

[fol. 2050] The Court: Where did the shipments of competitive containers come from, also Department of Commerce?

The Witness: Those, the corrugated shipping containers, folding boxes and paper mill products shown on page 63 are from Department of Commerce.

The Court: Metal cans are from where?

The Witness: Department of Commerce.

The Court: Collapsible metal tubes?

The Witness: Estimates based on data from the Collapsible Tube Manufacturers Association.

The Court: Same as previous charts with respect to metal tubes?

The Witness: Yes, sir.

The Court: Polyethylene?

The Witness: The production of polyethylene from the national production authority for the years 1944 and 1951, and 1952 industry estimate, and that industry estimate refers to the polyethylene manufacturing industry.

The Court: Well, what is it a trade association of their?

The Witness: No, sir. I recall duPont Company and Un- [fol. 2051] ion Carbide and perhaps others, but I think probably they are from those two companies.

The Court: Polystyrene the same?

The Witness: No, that is from the Tariff Commission, sir.

Mr. McManus: Your Honor, the Government offers Exhibit G-34 through 38 and G-40 for the truth of the matter contained therein, in so far as the statistics are from Federal sources, such as the Tariff Commission or the Department of Commerce, sources of that nature. Excuse me. I should have said 33 through 38.

It offers the rest of the document for the purpose of showing the concern of the glass container industry for competition from or in roads into competitive lines.

The Court: What do you say to that, Mr. Hughes?

Mr. Hughes: I object to it, your Honor, without any voir dire, upon the ground that it is apparent from the testimony of the witness that this is totally a hearsay document.

The Court: I have no intention of restricting your voir dire, Mr. Hughes. You understand that.

[fol. 2052] Mr. Hughes: Yes, sir; I realize that. But it seemed to me at this point—

The Court: You had better plan to proceed with your voir dire.

Mr. Hughes: Yes, sir.

The Court: I am particularly interested, however, in your reaction with respect to the so-called Government figures.

Mr. Hughes: Well, I will elaborate on my grounds and then have a voir dire of whatever your Honor wishes.

The Court: No, I say that at this point, Mr. Hughes, because it seems to me that in your voir dire, among other things, you may want to go into that subject particularly, in addition to others, to determine for yourself whether you consider this as a reliable reporting of Government figures, on the one hand, and if you consider the Government figures as competent, on the other. Because frankly, I am much more impressed ad initio with your objection overall than I am with your objection for the limited purpose—

Mr. Hughes: Yes, sir.

The Court: —that Mr. McManus later suggested. [fol. 2053] I think before we go into that, at this point we will take a brief recess.

Mr. McManus: Your Honor, at a later date could we possibly substitute this for the other exhibits, so it would not be so confusing?

The Court: Surely.

Mr. Hughes: I would welcome that substitution.

The Court: I would welcome it right now. In fact, if you have a copy for me, I will take it with me.

Mr. McManus: Why don't we give it to you now, and you can take it with you, and as soon as you return we will have it marked.

The Court: Well, if Mr. Hughes wants it, it is a copy—

Mr. Hughes: I have a working copy.

The Court: You have a working copy.

Mr. Hughes: Yes, sir.

(Short recess.)

[fol. 2054] The Court: All right, you may resume the stand, Mr. Cheney.

RICHARD L. CHENEY, resumed.

The Court: Has everybody got the material they need in hand to go into this cross-examination?

Have you got this before you, Mr. Cheney?

The Witness: I do not, no, sir.

The Court: I think Mr. Cheney better have a copy, if he is going to talk about it.

Mr. Hughes: I should think so, your Honor.

The Court: If you would rather, he can take my copy and have it before him.

Preliminary cross-examination.

By Mr. Hughes:

Q. Mr. Cheney, would you turn to page 43?

A. I have it.

Q. You will see that after the column "end use" there is a column "1952 glass shipments M gross." Do you see that?

A. Yes.

Q. Then if you run down that column you come to "Pickles," and you come to a figure of 3530. Do you see that?

A. Yes, sir.

Q. What is that figure?

[fol. 2055] A. Since this is in thousands of gross, that is 3,530,000 gross of glass containers used to package pickles in 1952, according to our estimate.

Q. And when you say "our estimate," whose estimate was that? Did you prepare that estimate or was it Mr. Sammis who prepared that estimate?

A. Mr. Sammis and I prepared it jointly from the best available sources we could find.

Q. Well, what sources did you use to come up with this 3,530,000 gross of pickles?

A. That particular item, as I remember, was probably based on the annual statistical yearbook of Western Canner & Packer Magazine. As I recall it, that seemed to be the best source at that time.

The Court: What is the phrase "Western Canner &

"Packer"? Is it confined to the West Coast or the Western Hemisphere or what?

The Witness: It was started at San Francisco and published there and for many years covered just west of the Rocky Mountains, but its name has now been changed, within the past three or four years to Canner & Packer Magazine because it has gradually become a national publication.

The Court: Is that in the packaging industry generally considered to be a reliable publication?

[fol. 2056] The Witness: In the canning industry, yes, sir..

By Mr. Hughes:

Q. Mr. Cheney, you would not say that everything that was published in the Western Canner & Packer was the gospel truth, would you?

A. No, sir, I wouldn't.

Q. And that was your source, as you recall it, for that figure?

A. For that particular figure, yes, sir.

Q. Now, would you turn to page 45, please?

A. Yes, sir.

Q. And in the second column on that page you have "1952 Glass Shipments," is that correct?

A. Yes, sir.

Q. And the figures in that column, do they correspond to the figures in the second column on page 43?

A. I would say they purport to. I see now that they do not, in the case of pickles.

Q. You notice that the figure on pickles is a different figure on page 45 than it is on page 43?

A. That is right.

Q. Can you account for that difference?

A. No, sir, I can't at this time.

[fol. 2057] Q. Would you go back to page 43 and again go down the column to the item of syrups. Do you see that item?

A. Yes, sir.

Q. And the figure of 1250 gross, thousand gross?

A. Yes, sir.

Q. Do you recall the source of that figure?

A. No, sir, I don't.

Q. You really have no recollection of any kind as to where you got that figure?

A. No, sir.

Q. You do not know whether you were the one who went about getting it or whether Mr. Sammis was the one who went about getting it, is that right?

A. At this time, yes, sir, that's right.

Q. Would you turn to page 45 and run down the second column, and I ask you, is the second column there intended to correspond to the second column on page 43?

A. As I say, it purports—

Q. Is it intended to?

A. It is intended to, I should think.

Q. And you see, of course, that it does not?

A. I do now.

Q. You see the discrepancy there in the figures [fol. 2058] between 1250 and 3000—do you see that?

A. And 2300.

Q. And 2300, yes. You see that, don't you?

A. Yes, sir.

Q. Can you account for that difference?

A. No, sir, I can't.

Q. And then if you turn over to page 47 you see the second column there and you see that the figure for syrup there is 2300, is that right?

A. Yes, sir.

Q. And again is that intended to correspond to the figures in the second column on page 43?

A. I should think that it should, yes, sir.

Q. Now would you go to the next column on page 43, fruit juices. Do you see the figure 1100? Do you see that figure?

A. Yes; sir.

Q. Then if you turn to page 45, you see a figure for fruit juices?

A. Yes, sir.

Q. Those figures were intended to correspond, were they not?

A. I should think they should.

Q. And you see that they do not?

A. Yes, sir.

[fol. 2059] Q. Now do you recall the source of the figure for fruit juices as it appears on page 43?

A. I believe the Western Canner & Packer was the source on fruit juices.

Q. When you say you believe, I want you to bear in mind the distinction between recollection and surmise. Do you have a recollection that Western Canner & Packer was the source?

A. It was a long time, and to the best of my recollection—

Q. I appreciate that.

A. To the best of my recollection it was. This is an item that I can recall that they did list.

Q. And do you recall what the source was of the figure on page 45 for syrups, the one that does not correspond?

A. That should be from the same source, but—

Q. Are you able to account for the difference?

A. I am not.

Q. I beg your pardon, I was asking you about fruit juices and I think I shifted to syrups. If you turn to page 43, do you know the source of the figure for fruit juices?

A. To the best of my recollection, it was Western Canner & Packer.

[fol. 2060] Q. And you cannot account for the discrepancy in those figures?

A. No, sir.

Q. Now are you able to tell us the source of your information for baby food?

A. That was at the time published by the National Canners Association.

Q. In other words, you took a figure published by the National Canners Association, is that correct?

A. Yes, sir.

Q. And salad dressings, et cetera?

A. I don't recall the source on that.

Q. Preserves?

A. I don't recall the source on that.

Q. We have covered pickles. I am now down to catsup. Do you recall the source?

A. National Canners Association.

Q. Do you recall the source for honey?

A. I don't recall the source.

Q. Flavoring extracts?

A. I don't recall the source.

Q. Peanut butter?

A. I don't recall the source.

Q. Mustards?

[fol. 2061] A. I don't recall the source.

Q. Coffee?

A. I don't recall that.

Q. Vegetable oils?

A. I don't recall that.

Q. Olives?

A. The figure for olives was based upon data from the Spanish green olives industry. I don't recall the source of those figures.

Q. It was some sort of industry source?

A. Yes, some sort of an industry source.

Q. And meat and fish products?

A. I don't recall the source.

Q. And vinegar?

A. I don't recall the source.

Q. And Maraschino cherries?

A. That was one item covered by Western Canner & Packer.

Q. Spices?

A. I don't recall the source.

Q. Take page 43 itself. Who actually did the physical task of preparing page 43, you or Mr. Sammis?

A. Mr. Sammis.

Q. Would that be true of page 44?

[fol. 2062] A. That is true of all the numbered pages, all the charts.

Q. In other words, as you look at this exhibit all the pages that are on the righthand side, as you look at it, were all prepared by Mr. Sammis, is that correct?

A. That is correct.

Q. And as you look at it, the material on the lefthand-side, by whom was that prepared?

A. The text was prepared by myself.

Q. Did Mr. Sammis help you in the preparation of that text?

A. Yes, he did, and we conferred in the preparation of the righthand pages.

The Court: In other words, you worked together throughout this pretty closely?

The Witness: Yes, very closely.

Q. Now the figures that you show in this combined exhibit commence in many instances in 1929, isn't that correct?

A. That is correct.

Q. And they extend through to 1952?

A. That is correct.

Q. Now do I understand you to say that for the glass [fol. 2063] container figures your source was the U. S. Department of Commerce?

A. That is correct.

Q. The U.S. Department of Commerce did not start to collect those figures until 1947, isn't that correct?

A. I don't know what year they started collecting the figures directly from the industry. These earlier year figures, I believe, were obtained from the Glass Container Association. They were used in the War Production Board.

Q. I don't think you understood my question. The Department of Commerce itself did not start to collect figures until 1947, isn't that correct?

A. I don't know the year they started.

Q. But you do know that there was some year prior to which they did not collect figures?

A. Yes, sir.

Q. And that some year was a year subsequent to 1929?

A. Yes, sir.

Q. And you are unable to say what year it was?

A. That is correct. May I amplify my answer?

The Court: Just a minute. I am not quite clear on that. [fol. 2064] Are you trying to tell us, Mr. Cheney, with respect to the figures from the Department of Commerce, that you got the figures from published figures of the Department of Commerce, some of which were collected by the Department of Commerce itself, and some of which the Department of Commerce obtained from the glass industry; is that your testimony?

The Witness: Obtained from the Glass Container Association.

The Court: The Glass Container Association?

The Witness: Yes, sir.

The Court: Did the Department of Commerce get it from a book or a bulletin?

The Witness: Yes, sir.

The Court: Or a series of books or bulletins?

The Witness: There was a publication of the Department of Commerce that contained these.

The Court: And that publication of the Department of Commerce contained both the figures it had collected itself and the figures for years prior to that that it collected from the glass container people?

The Witness: Yes, sir.

By Mr. Hughes:

Q. And those figures they more or less obtained [fol. 2065] afterwards, isn't that right?

A. They obtained them from the Glass Container Association. They did not obtain them directly from the independent glass container manufacturers.

Q. Did they obtain them from the glass—what is the name of that association?

A. Glass Container Association.

Q. Did they obtain them from them annually or did they obtain them at the time when the Glass Container Association went out of existence, do you recall?

A. They had them before the Glass Container Association went out of existence.

Q. Do you know how they got them?

A. I do not know how they got them.

Q. All right, fine. Now again referring to the index, and I am referring specifically to page 63, the fifth column, which says, "Index 1939 \$."

A. Yes, sir.

Q. That begins with the year 1939 and extends down to 1952?

A. Yes, sir.

Q. Do you have any idea where those particular figures came from?

A. Those figures were arrived at, to the best [fol. 2066] of my recollection, by dividing the figure in

the column next to the left of it by the wholesale price index or by a similar figure for that same year.

Q. You say by the wholesale price index or a similar figure. Was it the wholesale price figure or was it a similar figure?

A. I don't recollect.

The Court: And what wholesale price index was it?

The Witness: I don't recall that.

The Court: You don't recall that?

The Witness: No.

Q. And actually whatever was done in that regard was done by Mr. Sammis, wasn't it?

A. It was.

Q. As to the figures on page 63, you say that your source for the other material there was U.S. Department of Commerce figures?

A. Yes.

Q. And who got those figures, Mr. Sammis?

A. Mr. Sammis.

Q. Will you now turn to page 64—

The Court: When it says down here "Source, United States Department of Commerce," you are only [fol. 2067] talking about the shipments figure, is that right?

The Witness: Yes.

The Court: That is on 63?

The Witness: Yes, that is correct.

By Mr. Hughes:

Q. And that would also be true on the next page, the unnumbered page?

A. That is correct.

Q. You say "Source estimates based on fragmentary data from Collapsible Tube Manufacturers Association." Who collected this fragmentary data, did you or did Mr. Sammis?

A. Mr. Sammis.

Q. Do you presently recall, so that you could describe to his Honor with any degree of reasonable certainty, what that fragmentary data consisted of?

A. No, sir, I don't.

Q. And again on that page you have a source, 1944 to 1951, National Production Authority. Can you tell me what that organization was?

A. That was a governmental organization similar to the War Production Board. As I recall it, that was in existence at the time of the Korean situation.

Q. Do you have any idea how they got those figures? [fol. 2068] A. No, sir, I don't.

Q. And whatever information you got from the National Production Authority was obtained by Mr. Sammis, is that correct?

A. That is correct.

Q. And then for the year 1952 you have an "industry estimate," and do I understand that in response to his Honor's questions you said that the industry estimates were derived from two sources, namely, the du Pont Company and the Union Carbide Company?

A. That is as I recollect it but there might have been some additional industry sources.

Q. I would like you to pause, and would you please tell me, if you can think of any other industry source?

A. May I refer to the first part of Exhibit G-33?

Q. Surely.

A. It might be mentioned there.

Q. Surely.

A. (After examining) There is nothing here that helps and I can't think of any others.

Q. And whatever data was obtained from these industry sources, whatever they may have been, was obtained by Mr. Sammis, is that correct?

[fol. 2069] A. That is correct.

Q. And again on page 64 you refer to a source there for the polystyrene production in pounds as the Tariff Commission, is that correct?

A. That is correct.

Q. Do you have any idea as to how the Tariff Commission collected those figures on polystyrene production in pounds?

A. No, I don't.

Q. Mr. Sammis was the one who obtained whatever information you got from the Tariff Commission on that?

A. Yes, sir.

Q. Going back for a moment to the Glass Container Association, did that at the time when it was in existence represent one hundred per cent of the glass container manufacturers in the United States?

A. No, it didn't.

Q. Do you have any idea of how many, what percentage it did represent?

A. No, not at this time, I wouldn't be able to estimate that.

Q. Would you turn to page 63, and you see there that the source indicated would be the Department of Commerce. Do you see that?

[fol. 2070] A. Yes, sir.

Q. And that is for the figures in the second column, is that right, under "Shipments"?

A. Yes.

Q. Now there is a column which says, "Shipments, Corrugated Shipping Containers." Were these figures obtained by the Department of Commerce from some sort of a trade association, do you know?

A. I don't know.

Q. In other words, you don't know how the Department of Commerce went about getting these figures for this particular category of material?

A. No, sir.

Q. And whatever information on that subject was obtained, was obtained by Mr. Sammis, is that correct?

A. Yes, sir.

Q. Now, Mr. Cheney, you have referred to the categories as to which the glass container manufacturers, members of your association, report to you, and those were the 15 categories that you indicated, is that right?

A. Yes, but I might—

Q. I am not sure that you mentioned them all.
[fol. 2071] A. I am not sure either.

Q. But there were about 15?

A. About 15, that is correct.

Q. And they are rather broad categories, are they not?

A. Yes, sir.*

Q. In other words, you take a category like food containers and you get a figure for food containers—well, there

are literally hundreds of items that are embraced in food containers, isn't that right?

A. That is correct.

The Court: And when you say food containers, that would mean containers, some of which were hermetically sealed containers of a vacuum type, some sterilized, some pickled, some preserved by sugar and so on?

The Witness: That is right.

The Court: In other words, there is no distinction made between the methods of preservation?

The Witness: That is correct.

Q. And there is no attempt on the part of the Association to break the figures down beyond that category of food containers?

A. No, sir.

[fol. 2072] Q. Indeed, the reporting companies do not report in any greater detail than that?

A. That is correct.

Q. So that you do not have from the reporting companies their figures on how much glass they sold for mayonnaise, let us say?

A. No, we do not.

Q. And is that true of the category of medicine and health also?

A. It is.

Q. And toiletries and cosmetics?

A. Yes, sir.

Q. And household and industrials?

A. It is.

Q. And I see, here food-packers tumblers. That would be the wide-mouth counterpart, I guess, of food containers, is that correct?

A. It is wide-mouth food containers and I don't know what that last category is.

Q. But in any event—

The Court: Tumblers would be jelly glasses, wouldn't it?

The Witness: Of that type—that would be one type of tumbler.

Q. And medicine and health in the wide-mouth is not reported to you in any greater detail?

[fol. 2073] A. Not in any greater detail.

Q. Nor toiletries and cosmetics in wide-mouth?

A. No.

Q. Nor household or industrials in wide-mouth?

A. No.

Q. When you come to dairy products, is that milk bottles?

A. That is milk bottles, cream bottles and certain jars that might be called for cottage cheese.

Q. The greater bulk of that is milk bottles?

A. The greater bulk of that is milk bottles, yes.

Q. And these figures, as they are reported to the Department of Commerce, are you in a position to say whether the figures that the Department of Commerce receives, are in the broad categories such as you described?

A. Yes, they are in the same categories.

Q. There is no end use breakdown of those figures, is that right?

A. No, sir, there is not.

Q. Now, Mr. Cheney, I would like you to go to page 2 of this document, and I would like you to turn to the text, which is opposite page 2, and that text, you say, was prepared by you, is that correct?

A. That is correct.

[fol. 2074] Q. You say, referring to the package industry that "It is a 9 billion dollar industry today, and the McGraw-Hill Publishing Company forecasts it will reach a value of \$10,850,000,000 by 1960."

Would you tell me the source from which you derived that figure of \$9,000,000,000?

A. That was a report made by the staff of, I believe it is Chemical Industry Magazine, a McGraw-Hill magazine. It was in ditto form, apparently for use of their own people, and a copy of which was furnished to Mr. Sammis in the course of our investigation.

Q. Do you know how the McGraw-Hill Publishing Company went about getting this \$9,000,000,000 figure?

A. Well, I have stated here that they started with a study made by the Division of Interindustry Economics of the Bureau of Labor Statistics, which covered data for 1947 and 1951 and brought that up to date to 1952.

Q. How do you happen to know that?

A. That was stated in the McGraw-Hill report and they quoted from the study of the Division of Interindustry Economics in their report.

Q. So that the McGraw-Hill Publishing Company's document [fol. 2075] mentioned that that was the source and you repeated that that was the source?

A. Yes, sir.

Q. Now, do you know what or who this Division of Interindustry Economics is?

A. Only in a vague way.

Q. Do you know how they went about getting the data which McGraw-Hill Publishing Company said that it relied on and stated so in its report and that you put into your report?

A. No, sir, I do not.

Q. Now, the 9 billion dollar figure was for what year?

A. That was for the year 1953.

Q. Was it 1953 or 1952?

A. 1953.

Q. 1953?

A. Yes, sir.

Q. The chart on page 2 goes back to 1939, does it not?

A. Yes, sir.

Q. Did McGraw-Hill go back to 1939 in the document which you relied upon from McGraw-Hill?

A. To the best of my recollection, it did.

Q. Do you know how they got back to 1939?

A. No, sir, I don't.

[fol. 2076] Q. Was it from some sort of a statistical study, do you know?

A. I don't know. I could guess but I don't know.

Q. Do you know how they went forward from 1942 to 1960?

A. I don't recall. I think they explained it but I don't recall how they did.

Q. So that you really cannot say how they arrived at their 1960 prognostication, is that correct?

A. No, sir; that is their statement.

Q. Do you know how McGraw-Hill got from 1951 to 1953?

A. No, sir, I do not.

Q. Or any year besides 1947 and 1951?

A. No, as I recall it, it was set forth in quite precise detail in that report but I cannot recall how it was done.

Q. No one expects you to recall it. Now turning to page 3, that chart was prepared by Mr. Sammis, is that correct?

A. That is correct.

Q. Do you know what he used, what tools he used, to plot that chart?

A. What do you mean by tools?

[fol. 2077] Q. I will withdraw the question. What source, what source material was it from which he plotted that chart?

A. The source material was the data on corrugated shipping containers shown on page 63.

Q. Which you have already told us about?

A. Exactly.

Q. On that chart on page 3 you see a dotted line, a broken dotted line of all packaging materials. Do you see that?

A. Yes.

Q. Commencing in 1946?

A. Yes.

Q. Where did you get that from?

A. That is evidently a translation of the dollar figures taken from chart 2 to standard dollars. I don't recollect exactly. It was an effort to relate those dollar figures with the physical unit figures of this chart here.

Q. You don't really remember how he did it?

A. No, I don't.

Q. Can you tell me how Mr. Sammis developed the trend line on page 3?

A. No, sir.

Q. On page 3 you plot the broken line for all [fol. 2078] packaging material. Do you know what packaging material he had in mind?

A. It was the total of those listed in the report of McGraw-Hill. I don't know exactly what was covered there.

Q. You mean you don't recall what McGraw-Hill used as its estimate of packaging materials, is that correct?

A. Yes, sir.

Q. And what products were embraced within its study?

A. That's right, I don't recall.

Q. Now, if you turn to page 4, could you tell me how the trend line was determined on that chart?

A. That is the same trend line as the one from the previous page.

Q. And not knowing how the first one was derived you cannot tell how the second was derived?

A. That is correct.

Q. Do you know how the broken line for consumer disposable income 1939 dollars, was obtained?

A. That was obtained by taking the Department of Commerce published figures on consumer disposable income and dividing by the retail price index—dividing by the change [fol. 2079] in the retail price index from the year 1939 so that it would be expressed in 1939 dollars.

Q. Is there more than one retail price index?

A. I don't know that.

Q. If there were more than one you wouldn't know which one was used, is that right?

A. That's right.

Q. Do you know what was meant by the term "consumer disposable income"?

A. I have a general understanding of it, I think.

Q. You tell me what your understanding is.

A. It is the total income of consumers less taxes. I guess that would be the net amount. I don't know what else might be deducted.

Q. And on the trend line of shipping containers, do you know what kind of containers were included?

A. Presumably all corrugated and solid fiber shipping containers.

Q. When you say "presumably," do you know or don't you know?

A. Well, I felt that I had an accurate understanding of it. I have known of this figure for many years, and that [fol. 2080] is my belief and understanding it is.

Q. What I wanted to find out from you is whether you know whether Mr. Sammis in plotting that line, whether you know what shipping containers he took into account?

A. I see now it is shown as corrugated shipping containers. Other than as it is stated here in the appendix, I don't know.

Q. Now, turning to page 5, Mr. Sammis prepared that chart also, did he not?

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Now, Mr. Hughes, I don't want to interrupt you. Are you going through each one of these charts with this witness?

Mr. Hughes: Well, your Honor, I don't know how far I need to go to satisfy myself, and I would hope satisfy your Honor, that there are very valid bases for objection to this document in its entirety and for any purpose that it might be offered; and that is my problem.

The Court: You mean you are attempting to show that it is inadmissible for anything under any circumstances?

Mr. Hughes: Perhaps I ought to take it in two bites. It [fol. 2081] is certainly not admissible for the truth of any facts or anything of that sort that it might be offered for.

The Court: It is not offered for that.

Mr. Hughes: Or as a survey.

The Court: No, it is not offered as a survey.

Mr. Hughes: What is it offered for?

The Court: It is offered to show apparently material before the Association of Glass Container Manufacturers, distributed to them, and apparently given some consideration, and how much we do not presently know, by their executive director, who said that he is experienced in the field, and representing his estimate of the situation.

Is that correct, Mr. McManus?

Mr. McManus: Yes, sir, your Honor. We have also offered the Department of Commerce—

The Court: I am leaving out the second phase of the figures of the Department of Commerce.

[fol. 2082] Mr. Hughes: I understood that he had offered this for the truth of the statistical material.

The Court: Oh, no, only in so far as it related to actual figures taken from Government agencies, as I understood it.

Mr. McManus: That is correct, your Honor.

Mr. Hughes: Well, your Honor, for what purpose and why is it relevant to show what the Glass Container Institute may have been studying in relation to any of the issues in this case?

The Court: It seems to me, Mr. Hughes, it is highly relevant. There is no question about that in my mind.

Mr. Hughes: Well, I would just like to say this, your Honor:

There has been reference here to the state of mind concept—

The Court: Yes.

Mr. Hughes: This awareness concept, and it seems to me that what your Honor observed at the pretrial discussion is pertinent, and that is that the issue that we are concerned with here is whether there is competition, and [fol. 2083] not whether somebody may think there is competition.

The Court: Oh, but, Mr. Hughes, the attitudes and the activities of buyers and sellers are, in my judgment, highly relevant evidence, though not necessarily conclusive, on the question of what is relevant market. Do you question that? If you do, I would like to hear some argument on it. It has never occurred to me that it could be questioned.

Mr. Hughes: Your Honor, I do have doubt about it, because I think that the issue here is whether there is competition within the meaning of the statute.

The Court: What is competition? How can you determine that from an abstract, apart from attitudes of people who buy and sell the products?

Mr. Hughes: Well, it seems to me the best way you can test it is by what actually happens.

The Court: What is one way.

Mr. Hughes: By what we set about to do when we took all those depositions and all the factual data we have sought to develop.

The Court: I have no doubt, if we get that far, you will be producing such data. But it seems to me, it is quite plain that this is at least relevant without saying what [fol. 2084] weight one is to give it on the issue of, for one thing, relevant market, and very possibly with respect to the issue of whether there is actually competition.

Mr. Hughes: Well,—

The Court: (Continuing) Depending, of course, in what framework you are defining competition. I am not trying to do that at this point.

Mr. Hughes: Well, your Honor, let's focus by an objection.

I object to the document on the ground that it is irrelevant and immaterial; that there is no proper foundation laid for its reception and that it constitutes no proof of competition, much less proof of any competition between Continental Can and Hazel-Atlas Glass Company.

The Court: All right, I will overrule the objection.

Now we come down to the second phase, which is a phase of the Department of Commerce, or let's take, for example, the Department of Commerce figures.

As I understand it here, this document, apart from materials gotten from private sources, contains materials from the Department of Commerce, from the Bureau of Labor [fol. 2085] Statistics, from the Tariff Commission, maybe from some other sources; what do you say with respect to that?

Mr. Hughes: Your Honor, may I suggest that we have a conference in chambers, because the question you raise, I think, may arise with other documents, and I think if we have had the benefit of a discussion and your Honor's ruling, I think we will be clear for a great many of the other documents.

The Court: I think that may be as well. We will have a conference in the robing room.

(The following took place in Judge Bryan's robing room:)

Mr. Hughes: Your Honor, sooner or later we would have to come to grips with this question.

The Court: I quite understood that. That is the very reason why I raised it here.

Mr. Hughes: With the Department of Commerce figures.

The Court: Now let me say something about the Department of Commerce figures, and my general view of this:

It seems to me—and I will hear you on this, Mr. McManus, when I get through—

Mr. McManus: Yes, sir.

[fol. 2086] The Court: —if you intend to prove Department of Commerce figures, or you intend to show that these are a correct summary of Department of Commerce

figures, the first requirement of that is to have the Department of Commerce figures, and without the Department of Commerce figures, the type of bulletin they are contained in, at the barest minimum. These gentlemen are in no position whatsoever to test the accuracy, or either the accuracy of the translation of the figures, on the one hand, nor even more important, whether the figures are of any real utility, or admissible in any event.

Mr. Hughes: That is precisely our position, your Honor.

The Court: So that at this stage, my inclination is to admit this document for the limited purpose that I have defined, and which I have ruled on, without in any way indicating how much state of mind, if you want to use that rather ambiguous phrase, or activities, how important a factor that may or may not be in this whole picture. Suffice to say, this is, in my judgment, relevant evidence on the general subject, and we will discuss how it fits into the pattern, and the extent to which it may fit at some other point.

[fol. 2087] No. 2: With respect to the figures that are offered in the charts, that are offered here as evidence of the Department of Commerce figures, which in turn are evidence of something we don't know what they are evidence of, I am going to exclude it as to that. If at some future time you introduce Department of Commerce figures, and either through the present witness or some competent statistician you are able to say that the Department of Commerce figures in there are valid, for some reason or another, and I have admitted them, and this is an accurate summary of them, it will be introduced as a summary, and under the well recognized rules about introducing summaries of complicated figures.

Mr. McManus: Yes, sir.

Mr. Hughes: That, of course, pertains only to what purports to be Department of Commerce figures.

The Court: Of course, Department of Commerce, or indeed the other Government agencies, if Mr. McManus wishes to bring them in and show they were arrived at, that is, show some foundation for their admissibility.

Mr. McManus: I understand, your Honor.

[fol. 2088] Mr. Greenberg: Your Honor, will we need certification of any census or commerce data?

The Court: Well, I think if you bring a published bulletin of the Department of Commerce, I would be amazed, if it was an official publication of the Department, if you required any certification.

Mr. Johnson: We have tried, your Honor, I am sure you know, to be reasonable about those things, and we certainly shall. Sometimes—

The Court: Frankly, I would be a little horrified if there was certification of a well recognized Department of Commerce bulletin. I think we passed that evidentiary stage.

Mr. Johnson: I was going to add that sometimes there are special purpose studies which are nonetheless made by governmental agencies, for which we might want to probe deeper than the mere publication of the document.

The Court: I quite understand that, and you are quite at liberty to do that. For instance, there is this study of the Bureau of Labor Statistics. At the moment I know nothing about that, how it was arrived at, what the Bureau of Labor Statistics did; whether it was a mere estimate by throwing a lot of figures in the air, or whether it was [fol. 2089] a very solid, sound statistical study, that is entitled to weight. I just don't know.

Now, Mr. Hughes, I don't want to restrict your cross-examination on this document, because any cross-examination goes to the weight, to some extent. But it seems to me that we can summarize the thing with this witness by asking whether or not this was his judgment of the problem contained in this book as a result of the studies he said he made, and whether he presented this judgment in this form to the Institute. Then if anybody wants to ask him what the Institute did about it, if anything, they may do so.

Mr. Hughes: Well, your Honor, I don't think I would want to ask him that question in that form, but—

The Court: You can draw your own version as to form.

Mr. Hughes: Frankly, your Honor's ruling and the limitation that your Honor has now put on the document raises some question in my mind as to just how much additional cross-examination on this document there ought to be at this time, it being admitted for that limited purpose, and as your Honor could probably see, my examination up to [fol. 2090] this point had been directed at showing what

had seemed to me were deficiencies in taking this document in its entirety for what it purports to be and for everything that is purported to be recited in it, I think it might be useful if we conferred amongst ourselves for a few minutes and decided whether there should be further examination on this document alone, which could really be very extensive.

The Court: Oh, I stopped you, Mr. Hughes, because if you really wanted to make a thorough examination on this document you could go on for a couple of days without any difficulty.

Mr. Greenberg: Your Honor, may I ask one question to have a point clarified?

Apparently there is some Government statistics in this volume which the defendants will require some foundation testimony for or some certification, such as Bureau of Labor Statistics material, things of that nature.

The Court: Now, you misunderstand me.

Mr. Greenberg: All right, your Honor.

The Court: There are at the present time in evidence no Government statistics. All that is in evidence is a book [fol. 2091] prepared by the witness on the stand as a result of certain things which he says he did, which he presented to the Glass Containers Institute. The truth of any of these statements in here, except for such as perhaps the statement that was presented to the semi-annual meeting at such and such a date, this is not evidence of the truth of anything. If you want to establish the truth of any figures, it is up to the Government to establish them.

Mr. Johnson: Just so that I have this clear in my mind for our consideration of this, as I understand it, under your Honor's limitation of the use of this document, errors or inconsistencies, obvious or otherwise, in this document will become irrelevant?

The Court: Well, they would become irrelevant, Mr. Johnson, except to the limited extent that they might show that Mr. Cheney had bad judgment on this whole problem anyway. They wouldn't necessarily. I mean, in other words, I am not saying that the fact that there is a typographical error in some figures demonstrates that his judgment is necessarily no good, but I can conceive of

circumstances where some of the cross-examination might prove relevant even on the limited purpose for which this is in. It might or might not.

[fol. 2092] Mr. Johnson: Then that is helpful.

Mr. Hughes: Well, if your Honor will excuse us?—

The Court: Is there anything else anybody wants to raise in here now?

Before you go out, so that your deliberation will be of maximum fruitfulness at this stage of the afternoon, I should like Mr. McManus to give me some idea of how many more things of this general character we have got, so that they could be considered together with this problem and perhaps disposed of on some similar basis?

Mr. McManus: Your Honor, I believe that this one is more or less unique. There are a number of other surveys, but not of this type.

The Court: Well, this is of course not a survey.

Mr. McManus: Excuse me.

The Court: In the true sense of the word.

Mr. McManus: That is correct, your Honor.

The Court: In other words, it is not like a consumer survey, with the evidentiary rules that apply to surveys.

Mr. McManus: That's right, your Honor.

[fol. 2093] So that as I recall, this is the only one of this particular type. Now, there are some others which possibly can be grouped together and may be considered in a group, and I will make every effort to do that as best I can.

The Court: Now, if we have this mass of documents, are we going to take all day tomorrow with this witness?

Mr. McManus: I wouldn't be surprised, your Honor.

Mr. Hughes: I would think so.

The Court: Particularly, in view of the 4th of July weekend, I think everybody ought to have a reasonable opportunity to miss as much of the rush as possible, and, frankly, in view of the fact that we are going over to the fall on the Government's case for such a lengthy period, I am considering rising for a late lunch hour tomorrow.

How would you gentlemen view that? If I hear any violent protest, I will drive you to the bitter end.

Mr. Johnson: None, with this question:

In view of the extent of Cheney's examination, we will be able to finish with him within that limitation?

Mr. McManus: Well, I will attempt, your Honor, [fol. 2094] to move as quickly as I can.

The Court: Well, if we have got to have Cheney back here, we have got to have Cheney back.

Mr. McManus: There is no problem with him, your Honor. He works right here in New York City.

The Court: Let me say off the record.

(Discussion off the record.)

Mr. Handler: Judge, in line with your comments, I think we can safely assume then that it is Cheney for tomorrow, and nobody else.

Mr. McManus: Your Honor, could I do this:

Could we check on it to this extent—

The Court: Or if you want to take Cheney off, if you have a couple of short witnesses that are here from out of town, let's get them over with.

Mr. McManus: I think there may be. I think there may possibly be two out of town witnesses, who would go on for a document or two.

Mr. Hughes: Who are they?

Mr. Greenberg: Mr. Reinhardt is one.

Mr. McManus: Mr. Reinhardt, and I think there would be one or two documents which will take five or ten minutes.

[fol. 2095] (Further discussion off the record.)

The Court: Well, now, gentlemen, it is now quarter past four. It seems to me if you are going to confer, and unless your conferences are much briefer than lawyers conferences I have ever heard of—

Mr. Handler: They have been awfully brief in this case, sir.

The Court: —You are not going to be through by 4.30 with your conference, and you might as well do it at your leisure.

Mr. Hughes: All right. I think that is a good idea.

The Court: If you do it in a leisurely fashion, you will be able to come out with answers much more comprehensive and perhaps much more intelligent than you would otherwise.

So we will take a recess until 10.30 tomorrow morning. We will plan to rise tomorrow so that you can all make your plans to depart at the lunch hour.

All right, gentlemen.

(Adjourned to July 1, 1960, at 10.30 o'clock a.m.)

[fol. 2096] New York, July 1, 1960; 10.40 o'clock a.m.

Trial resumed

Mr. McManus: Mr. Cheney, will you take the stand, please.

The Court: Before we do that—all right you may take the stand.

RICHARD L. CHENEY, resumed.

The Court: What is the present status of the discussions that we had yesterday, and what have you to report, if anything, Mr. Hughes, concerning those?

Mr. Hughes: Well, you mean with reference to today's program?

The Court: In other words, you want to continue, I take it, some cross-examination?

Mr. Hughes: Some, yes, sir. But I think I can confidentially say that it will not be as extensive as I thought it might have been yesterday.

The Court: Very good.

Mr. McManus: Your Honor, before we start *start* again, I [fol. 2097] don't believe the record does show as yet, or the clerk is not informed, that we have made a formal offer of G-33, 34, 35, 36, 37, 38 and 40, for the limited purpose which you ruled on, I believe, yesterday.

The Court: Well, now, Mr. McManus, wouldn't it be simpler if we took the original document and merely marked it with a G number, whatever it is?

Mr. McManus: Well, it has not been marked, your Honor.

The Court: I mean, for identification now.

Mr. McManus: We could withdraw the G numbers that I have referred to, and give this one a new G number, or one of those.

The Court: Yes. It seems to me that a single number will suffice. It is not such a complicated document. There are page numbers within it.

Mr. Hughes: That's right.

Mr. McManus: That's right.

The Court: We have enough numbers to deal with in this case anyway.

Mr. McManus: That's right.

[fol. 2098] Mr. Hughes: The present numbers are 33 to 38 and 40.

Mr. McManus: Yes, sir.

Mr. Hughes: Any number within that.

The Court: Well, let's just take—

Mr. Hughes: G-33 to 38 and 40 are the present exhibit numbers.

Mr. McManus: Well, your Honor, then we will formally withdraw G numbers 33 through 38 and G-40, and substitute G-33.

The Court: G-33.

Mr. McManus: Yes, sir.

The Court: The so-called survey of market problems of the glass container industry, or the document entitled "Survey of Market Problems," will be marked as G-33.

Mr. McManus: Yes, your Honor.

The Court: It will be admitted in evidence at this time for the limited purposes that I indicated at the conference in the robing room yesterday afternoon.

Mr. McManus: Thank you very much.

(Government's Exhibit G-33 received in evidence.)

[fol. 2099] Mr. Hughes: May I proceed, your Honor?

The Court: Yes, you may.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, referring to Exhibit 33, I call your attention to pages 50 and 51, which are the figures relating to the possible losses and the possible gains; do you see that?

A. Yes, sir.

Q. And those figures were plainly and simply your judgment figures, is that correct?

A. That is correct.

Q. Representing the judgment of Mr. Sammis in consultation with you, is that correct?

A. Yes, sir.

Q. And this was in what year?

A. It was prepared during the last half of 1953 and presented on December 1, 1953.

Q. Now since that time you have had discussions with counsel for the defendant before becoming a witness here, isn't that correct?

A. That is correct.

Mr. Hughes: I ask that this list be marked for identification.

Your Honor, here is a copy of it and counsel [fol. 2100] has a copy.

(Marked Defendants' Exhibit N for identification.)

Q. In the course of those discussions, Mr. Cheney, do you recall our asking you whether you felt that you could estimate with reasonable certainty the quantities of particular types of products that moved in particular types of containers? Do you recall our discussion along that line?

A. Yes, sir, I think it was proportions rather than quantities.

Q. Proportions rather than quantities, that is correct.

And in the course of that discussion you indicated estimates of percentages of particular end products, and do you recall that we prepared a list of those products with the summary of your estimates of percentages; is that correct?

A. That is correct.

Q. And is the paper that you have before you, Exhibit N for identification, the list to which I have been referring?

A. Yes, it is that list.

Q. And does that list represent your opinion with reasonable certainty as to the percentage of those [fol:2101] particular products which are moving in the containers indicated in the remarks in the righthand column of the exhibit?

A. That is correct.

The Court: As of when, Mr. Hughes?

Mr. Hughes: Currently, your Honor.

The Court: Currently?

Mr. Hughes: Yes.

The Court: All right.

Q. And that list was prepared based upon your knowledge and experience as you have outlined it to his Honor here on the witness stand?

A. That is correct.

Q. Now in the course of that discussion did we discuss with you other items, other end products, as to which you indicated that you did not feel that you could give us an opinion with reasonable certainty as to the percentages moving in any particular type of container?

A. That is correct.

Q. I show you another list and I ask you whether that is the list which contains the larger number of products from which you selected the products which are reflected in Exhibit N for identification?

A: Yes, that is the list.

[fol. 2102] Mr. Hughes: Your Honor, I have shown this to counsel and I have agreed to furnish this list to them. Actually, through an oversight, this is the only one I have with me, the other is on its way to the Courthouse.

The Court: Very good.

Has that been marked for identification?

Mr. Hughes: No, I am asking that it be marked for identification at this time.

(Marked Defendants' Exhibit O for identification.)

By Mr. Hughes:

Q. So that I may make this clear, if you compare Exhibit N for identification and Exhibit O for identification you can derive those products which you selected and stated that you could give an opinion on with reasonable certainty and those which you could not, is that correct?

A. Yes, the ones that are listed on Exhibit O would be the ones that I could not give you an opinion on.

The Court: Mr. Cheney, do you know where the list, the combined list of products shown in Exhibit N and Exhibit O come from?

[fol. 2103] The Witness: No, they were shown to me by counsel for the defendant.

Mr. Hughes: They are our compilation, your Honor.

The Court: In other words, are you using here a list of products which was taken from some other place or is this the one you made up?

Mr. Hughes: We made it up ourselves.

The Court: You made it up?

Mr. Hughes: Yes.

The Court: All right.

Mr. Hughes: This is not testimony, but we attempted to state a full end use category.

The Court: All right.

Mr. Hughes: Your Honor, with that explanation, I offer these two documents in evidence.

The Court: Now, what have you to say, Mr. McManus?

Mr. McManus: Your Honor, I object to the documents, particularly the first document—is that document N?

The Court: Yes.

Mr. McManus: In that it was made up by the defendants and I believe is a very ambiguous and mis-[fol. 2104] leading document. It contains such vague terms as "all or substantially all," and "retail sizes" and "institutional sizes."

I think that there is really no basis for this so that you can understand actually what the document purports to be.

Mr. Hughes: Your Honor—

Mr. McManus: Excuse me. Then there is no time period, and it is difficult to tell whether we are talking about

these or whether we are talking about the quantity of the products.

In other words, take ammonia, all ammonia. Are they talking about the cans or the glass that it moves in? Are they talking about the gallons of ammonia?

I think it is a misleading document which has been prepared by the defendant and therefore I object to it.

In addition I would like to ask Mr. Cheney one question.

The Court: You may do that.

Mr. Hughes: Your Honor, I think, if I may, there are one or two additional questions that I would like to put to Mr. Cheney which might clarify this.

[fol. 2105] Mr. McManus: May I just ask one?

The Court: Let Mr. McManus have his question before you do that.

Mr. Hughes: Surely.

Mr. McManus: Mr. Cheney, you are not testifying that this is a complete list of all products that move either in glass or metal containers?

The Witness: By no means.

Cross-examination continued.

By Mr. Hughes:

Q. Mr. Cheney, in the estimates, you will observe with respect to a considerable number of items that your estimate states, "All or substantially all in glass."

Q. Could you tell us what you meant by that expression?

A. Well, virtually 100 per cent. In most cases I didn't know of any other containers.

Q. Also there are numerous instances where you have said, "All or substantially in cans," and would you tell me what you meant by that?

A. Virtually 100 per cent. I did not know of any or only of a small amount in any other containers.

Q. When you were expressing this percentage, was it a percentage in your opinion of the quantity of the product [fol. 2106] that moved in the particular type of container?

A. That is correct. In most cases it is.

Q. And when you referred to retail sizes, what were the sizes you were thinking about?

A. Sizes which you would ordinarily buy in a retail store.

Q. And when you refer to "institutional sizes," what were you referring to there?

A. The sizes that restaurants or hospitals or institutions would use for, let us say, mass feeding operations.

Q. Mr. McManus has said that there is no time reference. As of what time was this estimate?

A. As of the present time, generally.

The Court: When did you interview Mr. Hughes' firm or did they interview you, how long ago?

Mr. Hughes: Was there more than one?

The Witness: Yes, we had three interviews.

The Court: In what general time period? I am not interested in dates.

The Witness: Between—I would say between about the first of April and two or three nights ago.

The Court: But your testimony here is that this is your [fol. 2106a] best estimate based on your judgment and experience in the industry as of today?

The Witness: Yes, sir.

The Court: Very good.

[fol. 2107] The Court: Do you wish to examine the witness any further before I rule on these offers, Mr. McManus?

Mr. McManus: Your Honor, I just got this this morning, and I would think that I would not. If at a later time I find that I would like to ask him some questions, I would like to reserve that right.

The Court: You are entitled to question him about that, but I am going to overrule your objection and take the exhibit at this time.

Mr. McManus: All right.

(Defendants' Exhibit N and O for identification received in evidence.)

Mr. Hughes: Your Honor asked from what this basic list was derived, and I think I should say in explanation that it was designed to account for the end products which, taken together, account for the bulk of canned

usage and of glass usage. / At least that was what we were attempting to achieve.

The Court: Yes.

By Mr. Hughes:

Q. Mr. Cheney, I show you an article, which purports to be from the Ceramic News of August 11, 1958, and [fol. 2108] which purports to quote from a speech or certain remarks that you made to security analysts in San Francisco. Would you look at it and tell me whether the quotations in that are accurate quotations of your remarks on the occasion of that speech?

A. I recall the article and I read it at the time, and it is my opinion that these are accurate quotations.

Mr. Hughes: I offer that in evidence.

Mr. McManus: No objection, your Honor.

The Court: It may be received.

(Defendants' Exhibit P received in evidence.)

Mr. Hughes: Now, your Honor, I think that concludes any examination that I felt was tied into this Exhibit 33.

The Court: All right. So we will consider that the end of the voir dire on this document.

Mr. Hughes: Yes.

The Court: Sometimes we get a little confused on this.

Mr. Hughes: I think the documents I put in really go beyond voir dire, but they were related to voir dire.

[fol. 2109] The Court: We cannot draw these fine technical distinctions in situations like these, Mr. Hughes.

Mr. Hughes: Yes. I only wanted to be clear that I thought it had broader probative value than just voir dire.

The Court: All right.

Now, Mr. McManus, I presume you wish to proceed further with the witness?

Mr. McManus: Yes, sir; and, your Honor, to move along as expeditiously as we can, and to perhaps get out of the way certain documents which may or may not be objected to, I would like to show the witness G-319 through 346 which, if he will examine, I believe are

advertisements placed by GCMI in the magazines, as indicated on the document.

The Court: Is there any objection to these, Mr. Hughes?

Mr. Hughes: No, your Honor. I would like to ask the witness a few questions in connection with them, but there is no objection if they are marked. Perhaps I could do that at this point.

The Court: Well, suppose we say that G-319 through [fol. 2110] 346, inclusive, will be admitted without objection. Mr. Hughes, however, wishes to ask some questions about them and may do so.

(Government's Exhibit G-319 to G-346, inclusive, received in evidence.)

By Mr. Hughes:

Q. Mr. Cheney, these exhibits which are in the process of being marked are advertisements which the Institute ran in Life and other publications; is that correct?

A. They all ran in Life, yes, sir.

Q. And do you recall the period or the approximate period during which they ran?

A. These ran in the year 1959 and up to about May, 1960.

Q. Now, were these advertisements designed to feature what you regarded as the advantages of a glass container as distinguished from other types of container?

A. That is correct; yes, sir.

Q. And would you tell me what you regard as the advantages of a glass container?

A. Well, there is the chemical inertness of glass; the [fol. 2111] transparency; the dimensional stability, which in turn provides for easy seal and reseal and good seal; the impermeability; odorlessness; tastelessness.

Q. Did you mention recloseability?

A. I did, sir.

Q. And would you say that they embrace the characteristics which you consider to be advantages of glass as a container?

A. Yes, sir.

Q. And would you say that it was those character-

istics which are the theme of the ads which constitute the exhibits here in evidence?

A. Yes, that is correct.

Q. That is, some of them might feature one or more of them, some of them feature only one; some feature all of them; is that correct?

A. I doubt if any of them feature all of them, but—

Q. At any one time?

A. At any one time, yes. Otherwise your statement is correct.

Q. Now, while we are at it, are there any disadvantages to glass?

[fol. 2112] A. Glass is heavier than most other packaging materials, and it is inclined to break if hit hard enough.

By the Court:

Q. Mr. Cheney, was Hazel-Atlas Glass Company a member of the Glass Container Manufacturers Institute?

A. Yes, sir; they were.

Q. Prior to this merger or acquisition by Continental Can?

A. Yes, sir.

Q. And is Continental Can still a member of the Institute?

A. Yes, sir; it is.

Q. That is, through its Hazel-Atlas Division?

A. And through its White Cap.

Q. And through its White Cap Division.

Q. Let me ask you this: how are these advertisements paid for?

A. These advertisements were paid for from a portion of the dues of all the members of GCMI, which dues are based on the dollar sales, a percentage of their dollar sales.

Q. And as I understand it, Continental Can would be second in the percentage of dollar sales; is that right? [fol. 2113] A. I don't know that, sir.

Q. Well, who are the first four?

A. First four would be Owens-Illinois, Anchor Hocking, Hazel-Atlas—I am thinking of glass container companies now.

Q. Yes, all right.

A. Yes. And there is some question as to two or three playing for fourth position.

Q. I see, two or three playing for fourth position.

A. Brockway, Knox.

Q. But would it be a fair statement that Continental Can is one of the largest dues paying members?

A. It is, yes, sir.

Q. And some of Continental Can's dues went into paying for these advertisements?

A. Certainly did.

The Court: All right.

Mr. McManus: Your Honor, the next group that I would like to refer to are the group from 85 through 131, which I would like to show the witness, and which I believe to be—he can run through them hurriedly—minutes of meetings of committees, either the permanent [fol. 2114] type, or the special committees, of GCMI, the committees being identified at the top.

The Court: Well, I think first of all, if we have the witness go through all these—I take it that the defendants have been through all these, have they not, Mr. Hughes?

Mr. Hughes: Yes, sir.

The Court: Have you any questions as to the fact that these are the minutes of the various committees?

Mr. Hughes: Well, I have no doubt that if Mr. Cheney was specifically questioned about each one of them—

The Court: That is what I mean.

Mr. Hughes: —he would identify them as the minutes.

The Court: If we take the time to have Mr. Cheney go through 40 or 50 documents here we are going to waste all morning.

Mr. Hughes: Yes.

The Court: And I think we will do it this way, so as to afford the maximum protection to the defendant: Mr. Cheney, at the recess, will run through these documents hastily and see if they are the minutes. I take it, [fol. 2115] looking at 85 and 86, for example, these are all minutes of meetings of the committees named, and if you just try and take a quick check of them at recess,

that will save some time. I will assume at this point that they are the minutes.

Now, those being the minutes, are there any objections to them?

Mr. Hughes: Well, I wonder what the purpose of the offer is?

The Court: I think that is a fair question.

Mr. McManus: Your Honor, we contend that these minutes show the activities of the Glass Container Manufacturers Association, insofar as their attempts to compete with metal cans and their attempts to fend off competition from metal cans in areas where they are important factors. These are largely the minutes of the market research and promotion committee, and they show their activities and their expenditures, and also I did leave out in the non-food field, the plastic container.

Now, your Honor, I have a suggestion, if it is all right.

As I told you, we have Mr. Reinhart here from out [fol. 2116] of town, and if Mr. Cheney would like to step out and look at these at this time we could put Mr. Reinhart on. I do not believe it would be for any length of time.

Mr. Hughes: Before that is done and while we are on this subject, do I understand that they are not being offered for the truth of the contents?

The Court: Only in the sense that they record what happened at the meetings.

Mr. Hughes: Yes, that's right.

Mr. McManus: That is correct.

Mr. Hughes: But where factual data purport to be asserted, they are not being offered for the proof of any factual data.

Mr. McManus: They are being offered only as to what took place at the meeting, and not—as you say, if a man said—

The Court: Let's just analyze this problem a minute.

Plainly, if Mr. Cheney, let's say, reported to a meeting that he had put out and mailed this survey to all the members of the Institute, that would be a fact adverted to at the meeting, and I would be prepared to take the minutes as the evidence of that fact. If, however, Mr. [fol. 2117] Cheney takes a chart X from this Exhibit 33

and shows it to the meeting, and chart X is annexed to the meeting as having been exhibited to it, plainly it is not evidence of the truth of the facts in chart X.

Mr. Hughes: Similarly, if there were, let's say, discussion of figures and that sort of thing, industry statistics—

The Court: Except in relation to figures concerning the actual business of the Glass Container Manufacturers Institute, in the form of official reports of that Institute to a responsible committee. In other words, if, for instance, there is a report as to a budget figure for an advertising campaign that had been spent, I would expect to accept that.

Do you follow me?

Mr. Hughes: Yes, I do follow you on that, your Honor.

And to the extent that, as I understand it, to the extent that these minutes reflect or tend to reflect the program concerning which Mr. Cheney has already testified, you would take them as evidence.

The Court: Right.

Mr. Hughes: To the extent that they go beyond that into other areas—

[fol. 2118] The Court: If Mr. Cheney reports that the can manufacturers have a revolutionary can which is about to oust all bottles from the beer industry, I would doubt if I would take that as evidence about the revolutionary can. I would take it merely as evidence that such a report had been made at the meeting.

Mr. Hughes: And opinions?

The Court: That includes opinions.

Mr. Hughes: And prognostications.

The Court: I think that is reasonably clear, gentlemen. You can't cover every situation in minutes of this character at this stage.

All right. Well, now, Mr. Cheney, so that we do this thing as expeditiously as possible, suppose you take that and go into my robing room where you can thumb through these things and take a brief check on them. Then we will call you back.

The Witness: Thank you.

Mr. Hughes: Well, your Honor, I think in view of our discussion in chambers, it is pretty obvious how you

Honor's mind is running in respect to certain of these documents. Nevertheless, I would like to have an objection, a general objection on the ground—

The Court: You have an objection. I won't pass on it till I hear from Mr. Cheney.

Mr. Hughes: Fine.

Mr. Greenberg: Mr. Reinhart, will you please take the stand.

[fol. 2119] ROBERT B. REINHART, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The Court: What is the exhibit number with Mr. Reinhart?

Mr. Greenberg: Pardon me, your Honor, it is G-776,

The Court: Very well.

Direct examination.

By Mr. Greenberg:

Q. Where do you reside?

A. I reside in Merion, Pennsylvania.

Q. By whom are you employed?

A. I am retired.

Q. Were you employed by the Hazel-Atlas Glass Company at one time?

A. From 1911 to retirement.

Q. Your retirement was approximately in 1958, is that correct?

A. That's right, two years ago.

Q. What was your employment in 1954 with Hazel-Atlas?

A. Sales manager, Philadelphia district.

Q. You had the usual duties of a sales manager?

A. Yes, I did.

[fol. 2120] Q. I show you Government's Exhibit 776 for identification and ask you to identify it.

A. Yes, that is my writing.

Q. Is that your letter?

A. Yes, that's mine.

Q. Do you know what the facts of this document are based on?

Mr. Hughes: I object to the form of that question.

The Court: Yes, I will sustain the objection.

Ask him first what the document is.

Q. What is the document, sir?

A. The document is a repeating of a telephone conversation I had with somebody who was trying to pass the word along—

The Court: No, the document, I take it, is a report from you as Philadelphia district sales manager of Hazel-Atlas to Mr. Algeo at the head office, who was what, the director of sales at that time, or the vice-president in charge of sales?

The Witness: That is right.

The Court: And it dealt with incidents which had occurred in the course of your activities as district sales manager, is that correct?

[fol. 2121] The Witness: That is correct, thank you.

The Court: All right.

Q. Sir, there is a reference in the second full paragraph there to "Some other kinds of packaging." What did you mean by that term?

A. I really don't know what I had in mind except tins.

Mr. Greenberg: I offer this document in evidence.

The Court: For what purposes?

The Witness: For food packing.

The Court: I understand that, Mr. Reinhart, but I am asking Mr. Greenberg. I don't know whether we can use the document for that or not.

For what purposes, Mr. Greenberg?

Mr. Greenberg: Your Honor, we put it in to show again the wedge principle that was being used by various processors as a result of the can-glass relationship, and we put it in for all purposes as well.

The Court: For all purposes?

Mr. Greenberg: Yes.

The Court: It is not going to come in for all purposes?

[fol. 2122] Mr. Greenberg: Then we put it in for the purpose that I stated.

Mr. Hughes: I object to it as proof of the wedge principle, your Honor. This seems to be just rank hearsay.

The Court: Mr. Hughes, this is a fact, a fact that such a report was made by a district sales manager to the vice-president in charge of sales, which in itself is a fact, and I admit it for evidence of that fact, and that is all.

Mr. Greenberg: Thank you.

The Court: Do you want to examine about it?

Mr. Hughes: I don't think so.

The Court: All right, thank you, Mr. Reinhart.

Mr. Hughes: May we just note for the record our usual objections?

The Court: Yes, and the objection is overruled, and it is admitted for the limited purposes that I have indicated.

(Government's Exhibit 776 for identification received in evidence.)

(Witness excused.)

[fol. 2123] The Court: Now I note that Mr. Cheney reappears at a very fortuitous moment. You may resume the stand.

RICHARD L. CHENEY resumed.

Direct examination continued.

By Mr. McManus:

Q. Mr. Cheney, have you examined Government's Exhibits G-85 through 131?

A. I examined exhibits through 116. I thought it was just the minutes. From 117 on, they are semi-annual reports. I can quickly examine them.

The Court: Just run through them briefly.

(Short pause.)

The Court: They are simply annual reports to committees, are they?

The Witness: Yes, sir.

The Court: And those reports were made what, to the board of trustees or the board of directors of the Institute?

The Witness: They are made to the board of trustees and by them presented to the membership. Yes, these are unquestionably semi-annual reports of certain of our committees.

The Court: All right. You have made an offer of these exhibits, I take it?

[fol. 2124] Mr. McManus: Yes, sir.

The Court: Mr. Hughes, before I hear you, do you want to examine about them?

Mr. Hughes: Your Honor, I have no desire to examine on the voir dire in view of the discussion that we had. I think I understand what your Honor has in mind.

These documents, of course, are voluminous. I have a considerable number of notes with respect to each one of them. There might be things that I feel need clarification but they would not go to the voir dire.

The Court: Well, I think you better reserve that for your general cross-examination of Mr. Cheney.

Mr. Hughes: Yes, sir. That would be my feeling.

The Court: And have you any objection to the receipt of these documents on the limited basis that the Court outlined?

Mr. Hughes: Just my usual objection to relevancy and materiality.

The Court: That objection will be overruled and they will be admitted for the limited purposes indicated.

[fol. 2125] Mr. Hughes: Yes, sir.

Now, your Honor, may I say this: When we are talking about these exhibits, mindful of the amount of time that we have available to us today, it does occur to me that on some of these documents it just may not be feasible to attempt any kind of cross-examination on what I would say was the merits—

The Court: Mr. Hughes, I have had that in mind, and considering the volume of documents and what you may desire to go into, I am going to postpone or give you time for additional cross-examination of Mr. Cheney in the fall, if you desire.

Mr. Hughes: We can let Mr. Cheney know and let counsel know.

The Court: Yes. The exhibits that were just referred to, so that the record may be clear, are G-85 to G-131, inclusive.

Mr. Hughes: Did they go to 131? I thought he said to 116.

The Court: No. He testified that the balance of these were reports by committees to the board of trustees which were in turn reported to the membership, and they will be received under the same limitations as the others.

[fol. 2126] Mr. Hughes: May I just ask two general questions?

The Court: Yes.

Preliminary examination.

By Mr. Hughes:

Q. Referring to the reports as distinguished from the minutes, those reports on their face would indicate that they were prepared by the chairman of the particular committee, would they not?

A. Yes, they would on their face.

Q. And actually how were they prepared?

A. The usual custom is for the staff member or members who work with that committee to discuss it with the chairman and then incorporating his ideas and material from the files, the minutes and so forth, preparing the reports, submitting them to the chairman, who then goes over it, making any changes he may wish to and returns it for reproduction.

Q. Did you personally prepare any of these reports?

A. With the assistance of one or more staff members I prepare reports of the committee on market research and promotion and the subcommittee on beer bottles.

The Court: All right.

[fol. 2127] (Government's Exhibits 85 through 131 for identification received in evidence.)

Mr. McManus: The next exhibit, your Honor, is G-39.

The Court: All right, sir.

By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit G-39 entitled "A Plan of Action for the Glass Container Industry."

Did you prepare this document?

A. I prepared this with Mr. Sammis' assistance.

The Court: Was it prepared and presented at the same time as G-33?

The Witness: It was, sir.

Q. And it was presented as indicated here to the GCMI members at the semi-annual meeting of December 1, 1953?

A. That is correct.

Q. And did you follow this, did GCMI adopt this plan of action?

A. Not specifically but in general terms each recommendation except that one with regard to design research, with the exception of that one, in some form or other the other recommendations had been followed ei-[fol. 2128] their by GCMI or in one instance by a group of manufacturers acting as a group.

Q. Could you tell me if on page 40, if you go to page 40, which I believe is the last page of the document—

Mr. Hughes: Which page?

Mr. McManus: Page 40, which should be the last page of the document, entitled, "Advertising Publicity Budget."

Q. Was that budget adopted?

The Court: Wait a minute.

First explain to me two things: You have a minimum program set forth here and then you have a recommended program which is less than the minimum program. Could you explain that to me?

The Witness: Yes, in that exhibit these righthand pages were made from large charts, 30 by 40-inch charts and presented. We first had them in the reverse order, decided it would be better to show the minimum first and the recommended second, and the chartmaker failed to transpose the headings when he transposed the figures.

The Court: So that, in fact, these two should be transposed.

[fol. 2129] The Witness: Yes, sir.

By Mr. McManus:

Q. Could you tell us which one was adopted, Mr. Cheney, if either?

A. Neither one was adopted precisely, but it was more near—what finally resulted two years later was very close to the recommended budget.

Mr. McManus: Your Honor, the Government offers G-39 in evidence for the purpose of showing actually what the plan of action of the glass container industry was.

Mr. Hughes: We have the same objection to interpose to G-33 on the same grounds.

The Court: The objection will be overruled, and this exhibit will be admitted within the framework of the limitations that I have already indicated.

Mr. Hughes: Yes, sir.

The Court: And I take it, Mr. Hughes, that you will reserve any cross on this until your general cross-examination?

Mr. Hughes: Yes, sir.

(Government's Exhibit 39 for identification received in evidence.)

[fol. 2130] Mr. Hughes: Your Honor, may we have it understood that as to all of these documents I am going to make the same objection?

The Court: I think that it would not take any time to simply state the same objection and then we have a record that is a little clearer.

Mr. Hughes: Your Honor, I think that it ought to be made clear, if it has not been, that I had intended to make our usual objections to 117 through 131. I believe I did but—

The Court: Yes, I think you did, but, in any event, I will take it that you did and you will also take it that I have overruled you.

Mr. McManus: G-42 will be our next document, your Honor.

By Mr. McManus:

Q. Mr. Cheney, I show you Government's Exhibit 42. Was this document prepared for the Glass Container Manufacturers Institute?

A. It was.

Q. Were you responsible for having it prepared?

A. I was.

Q. And you had Mr. Ford Sammis of Ford Sammis Company prepare the document?

A. Ford Sammis & Company, yes.

[fol. 2131] Q. And what distribution was given to this document?

A. I know that it was furnished to the members of the Market Research and Promotion Committee. I think it was also mailed to all Glass Container Manufacturer members of GCMI, but I am not sure on that right at the moment.

Mr. McManus: Your Honor, the Government will offer G-42 for the same purpose as G-33 to show the activities—

The Court: To show what was before the Glass Container Manufacturers Institute and their activities in that connection but not for the truth of the matter.

Mr. McManus: Not for the truth of the statistics contained therein.

The Court: Very good.

Mr. Hughes: And not for the truth of the material, of the contents.

The Court: That I think is indicated, yes, except in so far as it indicates that a survey was conducted on behalf of the Glass Container Manufacturers Institute and this is the report with respect to it.

Mr. Hughes: Well, your Honor, this really [fol. 2132] raises a question which may assist us in expediting the matter. I think there are going to be a series of surveys. This is one of them. Some of them are much bulkier documents and they embrace a considerable number of documents.

It has occurred to me, since they are not being offered for the truth of the contents, and since your Honor is not taking them for that purpose, that we could stipulate

with reference to each one of them that a survey at such and such a time was made.

The Court: Well, suppose I take a brief recess at this point so that you can talk about that with Mr. McManus, and see whether we can get a stipulation that (a) will eliminate a lot of technical matter in the courtroom, and (b) will perhaps eliminate a considerable volume of bulk.

Mr. McManus: Yes, your Honor.

The Court: And there is no reason why both of you should not confer with the witness in that connection.

Mr. Hughes: Yes, your Honor.

(Short recess.)

The Court: All right, gentlemen, what have you to report?

[fol. 2133] Mr. McManus: Your Honor, I think we have worked out an arrangement whereby we can show these documents to Mr. Cheney, have him identify them, and go through them very rapidly, and we would make our offer on that basis.

Mr. Hughes: I thought that we were going to stipulate that on or about a certain date a certain survey or report had been made by GCMI or by whoever made it for them, and then you were going to ask the witness what distribution it had and that would be the end of it.

The Court: Yes, I think that is the way to do it.

Mr. McManus: All right, your Honor.

The Court: Then we do not want the actual document, do we?

Mr. McManus: We will have to use the document, your Honor.

The Court: Yes, we will have to use the document so that Mr. Cheney can tell us about the distribution.

Mr. McManus: But we also want the document as part of the record, your Honor.

[fol. 2134] The Court: Well, would you tell me this, Mr. McManus: I fail to see if a survey of the same general character as the last exhibit was made what possible utility it could have to have the record contain these great masses of documents. I am never going to read them—at least I hope I am never going to read them.

I don't see what help they would be to me in deciding this case.

What help do you think they might be to me in deciding the case or to an Appellate Court?

Mr. McManus: Well, your Honor, I think it is important to show—I am not saying that you have to read them, but I think it is important to show the fact that the survey was made and that it is a detailed survey and not just an informal one-sheet arrangement.

The Court: Let us do it this way. You will say that document so and so bears on its face that it is a survey conducted by John Smith & Company of the baby food situation in Chillicothe, Iowa, and that this is a report of 22 pages.

Do you want any more than that?

Mr. McManus: Well, your Honor—

The Court: I just do not see the point of piling paper on paper here, when the facts as to the survey or the [fol. 2135] conclusions as to the survey are of no particular significance.

Mr. McManus: Well, your Honor, I am not too sure that just from the heading—some of these surveys may refer to a number of products.

The Court: Don't they state on their face what they refer to?

Mr. McManus: Well, they would say fruits and vegetables and then there would be a whole list of products. For example, in G-82 it says fruits and vegetables and mixed fruits, peaches, et cetera.

Mr. Hughes: Your Honor, there would be no objection to some reasonable description.

The Court: Yes, some reasonable summary or description of what the survey covered.

Mr. Hughes: Some reasonable description which gets the fact of the survey stipulated to and then whatever inferences are to be drawn, they can be drawn. Any reasonable description as we go along, I am sure will be satisfactory.

[fol. 2136] Mr. McManus: Your Honor, I am afraid if we get into reasonable description here, it would take longer than it would be doing it the other way.

The Court: Mr. McManus, if you want all this bulk in,

go ahead and we will put the bulk in. But for heaven's sake, unless you can point to some very good reason why the Court should examine this material, I will tell you frankly, the Court has no intention of examining it.

Mr. McManus: All right, your Honor.

Mr. Handler: Your Honor, isn't there a question of cost here in the event of an appeal?

The Court: That is one of the things that concerns me.

Mr. Handler: To print all of this material that covers that entire desk, just look at it, would keep printers busy for almost a year printing all this material. We respectfully submit that this is a place where the Government ought to be required to stipulate and not encumber the record with thousands of pages of material that serve no useful purpose whatsoever.

The Court: What do you say to that?

[fol. 2137] Mr. McManus: Your Honor, I am sorry that we have so much bulk here, but I think it is necessary to protect the Government's interest.

The Court: I know. But, Mr. McManus, I have no feeling about bulk per se if bulk is going to be of help to the Court in deciding the issue. The only worry I have about bulk is when it seems to me to have no relevance at all as such.

Mr. McManus: Your Honor, I think that we do need it, because I think we would—

The Court: Let's try one of these. Let's refer to a specific document by way of example.

Mr. Hughes: You were on 42, your Honor. This all started with G-42.

The Court: G-42. Did G-42 go in, or was it 41?

Mr. Hughes: No, because at the point where your Honor asked me if wanted to examine, I suggested a stipulation, and I thought we had one.

The Court: Well, we have covered G-42.

Mr. Hughes: Well, I do want to bring this out from Mr. Cheney, because I think it is going to apply to many of these documents.

The Court: Suppose you examine on G-42 then.

[fol. 2138] By Mr. Hughes:

Q. G-42 was prepared by Ford, Sammis & Company, isn't that correct, and not by you?

A. That is correct, yes, sir.

Q. And forwarded to you?

A. And forwarded to me, yes.

Q. And whatever raw data and working materials they had, they kept; isn't that right?

A. I didn't receive them.

Q. All you got was the finished product?

A. Yes.

The Court: All right. So G-42 I will admit for the limited purposes that I indicated before we took our brief recess.

Mr. Hughes: Well, your Honor, could we clarify this to this extent, because we are moving into the area of survey: as I understand it, you are taking it as proof of the fact that a survey of this nature was made.

The Court: Was made and submitted to the Institute, with the distribution that Mr. Cheney indicated.

Mr. Hughes: Yes. Well, I think that statement of it, [fol. 2139] your Honor, if we could all bear that in mind as we go along, will be helpful to us, so that as your Honor takes it for the same purpose, as I imagine you will, it won't be necessary for me to be popping up all the time.

(Government's Exhibit G-42 for identification received in evidence.)

The Court: I take it 43 is the next exhibit?

Mr. McManus: Yes, sir; your Honor.

The Court: I note in 43 that there is a letter of transmittal which outlines the report. Why isn't a possible solution to put in the letter of transmittal and let it go at that, say to follow X number of pages, whatever they are, six pages of data.

Mr. McManus: Your Honor, on some of these that might be satisfactory, but on others, I don't think the letter of transmittal is of sufficient clarity to indicate what the report does cover in toto.

The Court: Well, I notice 44 seems to me to be of the

same category, 45, 46—all those relate to baby foods. Now, frankly, on these at least, unless you can show me any utility putting in these figures, apart from the title and the letter of transmittal, I am going to exclude it.

[fol. 2140] Mr. McManus: Well, your Honor; can we put them in on that basis at this moment, and, I of course have not had a chance to examine each one on that basis, and if I so desire, can I make an argument later to have the remainder put in?

The Court: All right; you may do that.

Mr. Hughes: When you say "on that basis," you mean that the transmitting letter will go in? Is that what I understand?

The Court: That is what I understand Mr. McManus to mean.

Mr. McManus: Yes, and we will indicate the pages; is that right?

The Court: All right.

Mr. McManus: 43, consisting of six pages; 44, consisting of seven pages; G-45, consisting of six pages; and G-46, consisting of 48 pages—these are in addition to the letter of transmittal; G-47—

The Court: All right, G-47 comes to soft drinks.

Mr. McManus: That is correct, your Honor. The letter of transmittal and five pages; G-48, the letter of transmittal and 9 pages; G-49, the letter of transmittal and 39 [fol. 2141] pages; G-50, the letter of transmittal and six pages; G-51, the letter of transmittal—

The Court: You don't have these pages numbered, most of them.

Mr. Hughes: Your Honor, may I at G-51 just interpolate for a minute? You take the letter of transmittal, the last paragraph says, "Philadelphia was chosen because this was one of the first markets where canned soft drinks were introduced in 1953 and has been subject to intense promotion on this product for the past year and half."

Now, certainly it isn't being taken for proof of that fact.

The Court: No, I made that quite clear, I thought.

Mr. Hughes: Yes.

Mr. McManus: G-51, the letter of transmittal and 21 pages; G-52, the letter of transmittal and 52 pages; plus five exhibits; G-53, the letter—

Mr. Hughes: Here again, your Honor, in the last exhibit is a typical last paragraph.

The Court: It is not necessary to go into that, Mr. Hughes, other than what you indicated.

Mr. Hughes: Yes, all right.

Mr. McManus: The letter of transmittal and [fol. 2142] five pages; G-54, the letter of transmittal and nine pages; G-55, the letter of transmittal and nine pages. Now, G-56, your Honor,——

The Court: Now we come to a slightly different trend.

Mr. McManus: That's right.

The Court: Let's take that bulk of material and find out, or can we ask Mr. Cheney what the distribution of these documents was.

Were they all the same, do you know?

The Witness: No, sir; not——

Mr. McManus: Excuse me. On G-56 I would like to indicate that we are only intending to offer page 1 and 2, and not the attachment.

The Court: I see.

Mr. Hughes: G-56?

Mr. McManus: G-56.

The Court: These aren't surveys. We will treat 56 separately for the moment.

Mr. McManus: Yes, sir; your Honor.

By Mr. McManus:

Q. Mr. Cheney, you prepared this document?

A. I did.

Q. And this was sent to all beer bottle manufacturers; is that correct?

[fol. 2143] A. That is correct.

Mr. Handler: Which exhibit is being shown?

Mr. McManus: 56, G-56.

The Court: Well, before we get to 56, what about 43 to 55, inclusive? Are you going to ask Mr. Cheney about those, as to the distribution of them?

Mr. McManus: All right, sir.

Q. G-43, entitled "Baby Food Container Situation 1956," what was the distribution of that document. Mr. Cheney?

A: It went to the members of the Market Research & Promotion Committee, and to the best of my recollection, that is as far as it went.

Q. This was available on a library loan basis to all the other members?

A. Yes, all of that would be available on that basis.

By the Court:

Q. What about 44, the same?

A. The same.

Q. 45?

A. Same.

Q. 46?

A. Yes.

[fol. 2144] By Mr. McManus:

Q. That would be the same distribution?

A. Yes, sir. I might add, the Market Research & Promotion Committee and the West Coast Subcommittee on these baby foods.

The Court: I see.

Q. G-47, Los Angeles store audits?

A. Parent committee and the West Coast subcommittee.

Q. And G-48?

A. The parent committee and the West Coast subcommittee.

Q. And G-49?

A. To the parent committee and the West Coast subcommittee.

Q. G-50?

A. To the parent committee and the West Coast subcommittee.

Q. And G-51?

A. This went to all members of GCMI, all glass container members of GCMI, with multiplate copies to those that manufacture bottles for soft drinks, and was also furnished with publicity releases to newspapers and trade press.

[fol. 2145] Mr. Hughes: Which number was that, please?

The Court: 51.

Q. 52?

A. G-52 was presented to the Market Research Promotion Committee as a chart presentation by representatives of McKinsey & Company, and no other distribution was made of it. Several copies were furnished to me and were used by staff members.

The Court: McKinsey & Company being, I take it, management consultants and market economists?

The Witness: Yes, sir; that would be right.

Q. G-53, distribution?

A. This went to the subcommittee on beer bottles, and probably to the parent committee on market research and promotion.

Q. And G-55?

A. Same as the last.

Q. G-54?

A. Same as the previous one, same as G-53, and G-55, same as G-53.

Q. Same distribution?

A. Same distribution.

The Court: All right, with respect to those exhibits, 43 [fol. 2146] through 55, inclusive, there will be admitted into evidence the title page and the letter of transmittal, and it will be noted that in each case the survey, admitted for the limited purposes indicated by the Court, consists of a number of pages of data and charts which Mr. McManus stated when he was going through them.

Mr. Hughes: May the record show our usual objection.

The Court: Usual objection. Overruled.

(Government's Exhibits G-43 through G-55, inclusive, received in evidence.)

Mr. Hughes: Your Honor, would you want to do the same thing with respect to 42? We started to do this at your suggestion.

The Court: No, I think there ought to be at least one sample of this in the record, so that we see the type of thing that we are dealing with.

Mr. McManus: And I understand it, your Honor, that if going through I should find one or two—

The Court: I will hear you further on it after you go through it, if you decide there are any specific documents you feel would be useful.

Mr. McManus: Thank you, your Honor.

[fol. 2147] The Court: I suggest that if you have a particular document that you think is of some utility, you select it.

Mr. McManus: Yes, your Honor.

Mr. Hughes: It might be helpful if we would be informed, too.

The Court: I am sure before we resume Mr. McManus will inform you as to what he intends to do with respect to this problem.

Mr. McManus: That is correct. Now we are at G-56.

The Witness: Pardon me. Could I add something to make accurate my previous testimony, that McKinsey & Company study, I believe, was also presented to the beer bottle subcommittee, as well as the parent committee.

The Court: Very good.

By Mr. McManus:

Q. And all of these documents are available on a library loan basis?

A. Except for the McKinsey study.

Q. Now going on to G-56, you prepared this document for distribution to the beer bottle manufacturers, you testified?

A. I did.

Q. And it was distributed?

[fol. 2148] A. It was mailed to them with the attachment.

Mr. McManus: Now, your Honor, we would like to offer this document without the attachments for the truth of the matter contained herein. This is not a survey or a study, but it is a statement by Mr. Cheney to the beer bottle manufacturers.

Mr. Hughes: Well, I object to that, your Honor. If he wants to ask Mr. Cheney about anything within his personal knowledge, why can't he do so?

The Court: Well, it seems to me if you want him to go through with Mr. Cheney the facts here then have Mr. Cheney testify that these things occurred and he put

them in a letter and he sent them out to the manufacturers, that is all right with me. It seems to me that the facts are in the letter, and he has read the letter, he testified that these are facts within his own knowledge, he put them in a letter, then we can go from there and you can cross-examine him. But we will go with the cumbersome method if you prefer it.

Mr. Hughes: Then I will cross-examine, your Honor.

The Court: Very good.

[fol. 2149] Let's first ask Mr. Cheney:

By the Court:

Q. Now, having looked at this document, the various statements made in that document did purport to recite things that you did? Did you do those things?

A. I did, sir.

Q. And is this an accurate statement of what occurred?

A. It is, sir.

The Court: Very good.

Now, Mr. Hughes, you may cross-examine.

By Mr. Hughes:

Q. Mr. Cheney, going to the third paragraph of Exhibit G-56, you indicate a price at which certain six pack carriers will be sold; do you see that?

A. Yes, sir.

Q. Where did you get that information?

A. Mr. Bennett, of Container Corporation, presented that orally and with charts to a group of representatives from glass container manufacturer companies and myself.

Q. This is something he told you and the group?

A. That's right.

[fol. 2150] By the Court:

Q. Does Container Corporation sell these six pack carriers?

A. Yes, they do, yes, sir.

Q. And he was in effect quoting what his corporation would do?

A. That is correct.

Q. With respect to prices?

A. That is correct; yes, sir.

By Mr. Hughes:

Q. And you got the information with respect to the price of the machines from him; is that right?

A. That's right.

Q. You are reporting something he told you?

A. And several other people, yes, sir.

Mr. Hughes: Yes.

The Court: Did you regard that in effect as a quotation of price by him?

The Witness: I did not. We weren't prospective purchasers.

Q. Of course you don't know whether he made a cross-country trip, do you?

A. Other than he told us he did.

Q. Well, he told you that he planned to?

[fol. 2151] A. Or that he planned to, yes. I happen to know that he did. He phoned me from San Francisco.

Mr. Hughes: I see. I shouldn't have asked it, Judge. Now, I understand that the charts are not being offered; is that correct?

The Court: That's right.

Mr. McManus: No, sir.

Mr. Hughes: Well, I object to it has hearsay.

The Court: Overruled.

(Government's Exhibit 56 for identification received in evidence.)

Mr. Hughes: Your Honor, I think perhaps the purpose of that offer should be alluded to.

The Court: Yes, I think that might be as well.

Mr. Hughes: On 56.

Mr. McManus: Your Honor, this document, we are certain, shows the glass container manufacturers' interest in promoting beer bottles in competition with metal containers.

[fol. 2152] The Court: All right. Now 57, if that is next.

Mr. McManus: Yes, sir; 57 is next.

57, your Honor, would come, I believe, under our—
would be in the same category as 55.

By Mr. McManus:

Q. And can you tell me what distribution was made
of that document?

A. This was mailed to all manufacturers of beer bottles.

Mr. McManus: The Government offers G-57.

The Court: Well, it is only two pages. You might as
well put it in.

Mr. McManus: The Government offers 57 for the same
purpose as G-55.

The Court: Same objection, no doubt?

Mr. Hughes: And this is subject to the same limitations.

The Court: Same ruling.

(Government's Exhibit G-57 received in evidence.)

Q. G-58 has the distribution as indicated, Mr. Cheney?

A. Yes, to the beer bottle manufacturers.

Q. And G-59 is the distribution to the beer bottle manu-
facturers?

[fol. 2153] A. The same, yes, sir.

Q. G-60, distribution of beer bottle manufacturers?

A. Yes, sir.

Q. Would your answer be the same for 61?

A. Yes, sir.

Mr. McManus: Your Honor, the Government offers G-
58, 59, 60 and 61 on the same basis as G-57.

The Court: All right.

Mr. Hughes: Same objections, your Honor.

The Court: Same rulings.

(Government's Exhibit G-58, 59, 60 and 61 received in
evidence.)

Q. G-62, a letter of transmittal and two pages of at-
tachment, that was distributed to the soft drink bottle
manufacturers?

A. It was.

Mr. McManus: Your Honor, the Government offers G-62.

The Court: Wait a minute. We have 62, 63, 64—are they all in the same general category, Mr. McManus?

Mr. McManus: Excuse me, your Honor.

Yes, your Honor. The Government offers 62, 63 and 64. [fol. 2154]. The Court: Well, now, 64 is a bulky document consisting of nine pages; do you want it all in or not?

Mr. McManus: Your Honor, at this time we will offer G-64, the letter of transmittal, and indicating that there are nine pages.

The Court: All right, under the same conditions as we indicated with respect to the other bulky documents.

Mr. McManus: That is correct.

Mr. Hughes: Same objection.

The Court: All right.

Mr. McManus: I just want to make clear we have offered G-62, 63 and 64; is that correct?

The Court: Yes.

Mr. Hughes: Same objection.

The Court: Same objection, same ruling.

(Government's Exhibits G-62, 63 and 64 received in evidence.)

Q. G-65 was distributed to soft drink bottle manufacturers?

A. Yes, sir.

Mr. Hughes: Your Honor, I hate to interrupt, but we are going so fast, I think I am getting lost. Take G-62, for example, which is something in the nature of an industry [fol. 2155] letter, with certain statistical material purporting to be from the Department of Commerce. Mr. McManus, would you explain again the purpose, let's say, of G-62? What is the purpose of that offer?

Mr. McManus: Excuse me, which number again?

Mr. Hughes: G-62. I am taking that as typical. It has some statistical data attached to it. In fact, it is a letter transmitting certain—

Mr. McManus: G-62, we contend, shows the concern of the Glass Container Manufacturers Institute for the intrusion of metal soft drink containers.

Mr. Hughes: That is the purpose of the offer.

Mr. McManus: That is correct.

Mr. Hughes: And that is the limited purpose for which it is taken.

The Court: That is the limited purpose for which it is taken, 62, 63 and 64.

Mr. Hughes: Yes.

The Court: Now 65, I take it?

Mr. McManus: Yes, your Honor.

The Court: Is 65 in the same category and the same considerations as the previous three exhibits, Mr. Cheney?

The Witness: Same as 62, yes, sir.

[fol. 2156] Q. And distributed to soft drink bottle manufacturers?

A. Yes, sir.

The Court: He said they are the same. Are they in all practical purposes the same as the others and handled the same way?

The Witness: Yes.

The Court: All right, that is true of 65, is it, and 66?

The Witness: Yes, sir.

By Mr. McManus:

Q. And 67?

A. Yes, sir.

The Court: And 68?

The Witness: Yes, sir.

The Court: And 69?

The Witness: Yes, sir.

The Court: And 70?

The Witness: Yes, sir.

The Court: All right, now we come to another phase.

Mr. McManus: The Government offers G-65, G-66, G-67, G-68, G-69 and G-70.

Mr. Hughes: Same objection.

[fol. 2157] The Court: For the same limited purpose.

Mr. Hughes: Same objection.

The Court: All right, same objection, same ruling.

(Government's Exhibits G-65 through G-70 received in evidence.)

The Court: Now 71.

Q. Did you prepare this document, Mr. Cheney?

A. I did.

Q. What was the distribution of this document?

A. This was distributed to all Glass Container Manufacturers members of the Institute.

Mr. McManus: Your Honor, the Government offers G-71 for the purpose of showing the Glass Container Manufacturers concern with the intrusion of metal cans for soft drinks.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-71 for identification received in evidence.)

Q. G-72, Mr. Cheney, would you tell me the distribution on that?

A. To all Glass Container Manufacturers members of the Institute.

[fol. 2158] Mr. McManus: The Government offers G-72 for the same purpose as G-71.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-72 for identification received in evidence.)

Q. G-73, with two-page attachment, did it have distribution to the glass container industry?

A. Yes, it did.

Mr. McManus: The Government offers G-73, your Honor.

The Court: Same purpose?

Mr. McManus: Same purpose.

The Court: Same objection?

Mr. Hughes: Yes, sir.

The Court: Same ruling.

(Government's Exhibit G-73 for identification received in evidence.)

Q. Government's Exhibit 74, Mr. Cheney. Who is John B. Carroll?

A. John B. Carroll is administrative assistant on our staff.

Q. Does he work under you?

A. Yes, part of his time he works under me.

[fol. 2159] Q. And are you familiar with this document?

A. I am.

Q. Did you cause him to prepare that document?

A. Well, this is one of a series that he was already preparing before I came to New York, but it is now under my direction.

Q. And this is a routine document?

A. It is.

Q. Prepared in the regular course of the business of GCMI?

A. In the sense that it is prepared quarterly, the same type of document is prepared quarterly.

Mr. McManus: Your Honor, the Government offers G-74 for the same purpose, the same general purpose as G-73.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit G-74 for identification received in evidence.)

The Court: Is 75—

The Witness: Same as 74.

The Court: —another issue of the same bulletin?

[fol. 2160] The Witness: It is, sir.

The Court: Issued under the same circumstances and with the same distribution?

The Witness: Yes, sir.

The Court: You offer it, Mr. McManus?

Mr. McManus: The Government offers G-75.

The Court: For the same purpose.

Mr. McManus: Same purpose.

The Court: Same objection, same ruling.

(Government's Exhibit G-75 for identification received in evidence.)

Q. Now, G-76, Mr. Cheney, can you tell me was this prepared under your direction, by your direction?

A. In the sense that I ordered to have the work done by Kenyon & Eckhart.

[fol. 2161] The Court: May I ask you this, Mr. Cheney: This exhibit is entitled "The GCMi-Giant Study." What does the word "Giant" mean? Does it refer to the size of the study or the size of the organization?

The Witness: It could well be the size, but, however, it refers to the Giant food shopping market in the Washington, D.C. area where the field work was made.

By Mr. McManus:

Q. What distribution was made of this study?

A. Exhibit G-76 was distributed to the members of the Market Research and Promotion Committee.

Q. And was that on a library loan basis?

A. It would be but I don't recollect that anyone has asked for it on that basis, but it would be.

The Court: Who were Kenyon & Eckhardt?

The Witness: They are our advertising agents.

The Court: You- regular advertising agents?

The Witness: Yes, sir.

Mr. McManus: Your Honor, the Government offers Exhibit G-76 for the limited purpose of showing competition between glass jars and metal cans.

[fol. 2162] Mr. Hughes: Is this for a limited purpose? When you change the phraseology I am a little troubled. I don't know whether this is something different than what we have been doing.

Is this another situation where we can stipulate the fact of the survey rather than put in 67 pages?

Mr. McManus: I am not too sure how we can actually work this out unless I take a few minutes to count the pages. There is no letter of transmittal to explain this.

Mr. Hughes: I make it 67 pages.

Mr. McManus: However, it is quite obvious, it is entitled "The GCMi Giant Study."

The Court: We will admit the title page at this time.

Mr. Hughes: Your Honor—

The Court: Pages 1, 4 and 5.

Mr. Hughes: Judge, I think your copy might be different from mine.

The Court: Well, let us make it the sections of the report or the survey entitled "Why the study was done and

how the study was done," which are referred to in the table [fol. 2163] of contents, and commencing with pages 1 and 4.

Do you follow me, Mr. Hughes?

Mr. Hughes: Yes, sir, I do, but I assume that is not proof of the fact that this actually was done this way.

The Court: This is still subject to the same limitations and offered for the same limited purposes, is that correct?

Mr. McManus: Yes, sir.

The Court: Again, Mr. McManus, if you find any material in the balance of this exhibit on which you particularly wish to rely, I will hear you on it.

Mr. McManus: Yes, your Honor.

The Court: So that we will consider the offer of 76 to comprise the title page, the first two sections listed in the table of contents, and there will be the same objection and the same ruling, and it will be admitted for the same limited purposes.

(Government's Exhibit 76 for identification received in evidence.)

The Court: Now, Mr. McManus, was there one other witness that you wanted to dispose of this morning?

[fol. 2164] Mr. McManus: No, sir. Mr. Reinhart was the witness.

The Court: He was the witness?

Mr. McManus: Yes, sir.

The Court: Then we will go ahead with Mr. Cheney, if there is anything further for him this morning.

Mr. McManus: G-77 is the next exhibit.

The Court: 77 is another Giant study.

By Mr. McManus:

Q. What was the distribution of that study, Mr. Cheney?

A. This went to all glass container manufacturers.

Mr. McManus: The Government offers G-77 on the same basis as G-76.

The Court: Are you offering all these charts? Why don't you offer the title page, pages 1 and 2?

Mr. McManus: The Government offers G-77, the title page, page 1 and page 2, for the same purposes as G-76 was offered.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 77 for identification received in evidence.)

[fol. 2165] By Mr. McManus:

Q. Mr. Cheney, G-78 was prepared by Kenyon & Eckhardt?

A. It was.

Q. And what was the distribution of that?

A. To the best of my recollection, just to the members of the Market Research and Promotion Committee.

The Court: All right, I assume that your offer will be—

Mr. McManus: The Government offers the title page and pages 1, 2, 3 and 4, your Honor.

The Court: All right.

Mr. Hughes: Some of these are Roman and some are Arabic.

Mr. McManus: These are Arabic.

Mr. Hughes: Which are these?

Mr. McManus: The Government offers the title page.

The Court: The table of contents, is that it?

Mr. McManus: The table of contents and pages 1, 2, 3 and 4, for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2166] (Government's Exhibit 78 for identification received in evidence.)

By Mr. McManus:

Q. Mr. Cheney, what was the distribution of Government's Exhibit G-79?

A. An oral presentation was made to the semi-annual meeting of members and the exhibit itself was made available to all members on a library loan basis.

The Court: You want to put in the letter, the description, the table of contents and the summary?

Mr. McManus: Yes, your Honor. The Government offers G-79 for the same purpose, the title page, the letter

of transmittal, the table of contents, and the description of the survey for the same limited purpose.

The Court: And the summary?

Mr. McManus: And the summary, for the same limited purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 79 for identification received in evidence.)

Q. Government's Exhibit G-80, what was the distribution of that document, Mr. Cheney?

A. Same as G-79.

[fol. 2167] Mr. McManus: The Government offers G-80, the title page, the page entitled "Glass Container National Survey 1954 Summary," and bearing copy No. 1, the letter of transmittal, the table of contents, and pages 1, 2 and 3.

The Court: Same objection?

Mr. Hughes: Yes, same objection.

The Court: Same ruling.

(Government's Exhibit 80 for identification received in evidence.)

Q. What was the distribution of Government's Exhibit G-81, Mr. Cheney?

A. Same as G-79.

The Court: That was simply the 1955 edition of G-79, was it?

The Witness: There is some variation but essentially it is the same.

The Court: Essentially so?

The Witness: Essentially so, yes, sir.

Mr. McManus: The Government offers G-81, the title page, the letter of transmittal and the table of contents for the same purpose.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2168] (Government's Exhibit 81 for identification received in evidence.)

Q. What was the distribution of G-82?

A. The same as G-79.

The Court: That in essence is the 1956 edition of the same survey?

The Witness: Yes, sir. There are considerable variations. We examined different problems and different situations but essentially it is the same.

Mr. McManus: The Government offers G-82, the title page, the letter of transmittal and the table of contents.

Mr. Hughes: Same objection.

The Court: Same ruling.

(Government's Exhibit 82 for identification received in evidence.)

Q. What was the distribution of G-83, Mr. Cheney?

A. Same as G-79.

The Court: Were you the author here or was somebody else?

The Witness: No, in all cases, Mr. Sammis.

Mr. McManus: The Government offers G-83, the title [fol. 2169] page, the letter of transmittal—your Honor, I don't know how we are going to limit this one.

In this instance, your Honor—

The Court: All right, offer it all.

Mr. McManus: I will offer G-83.

Mr. Hughes: Same objection, your Honor.

The Court: Same ruling.

(Government's Exhibit 83 for identification received in evidence.)

The Court: Let the record show that all of these are being offered for the limited purposes previously defined and admitted only for those limited purposes.

Mr. McManus: The Government offers G-84.

Your Honor, I would like to offer the whole document here, too, because I think it will be difficult to break it down.

The Court: All right.

Mr. McManus: For the same purpose.

Mr. Hughes: This was by Mr. Sammis and not by you?

The Witness: That's right.

Mr. Hughes: Same objection.

The Court: Same ruling.

[fol. 2170] (Government's Exhibit 84 for identification received in evidence.)

The Court: Now we are back to the minutes and you have already covered that.

Mr. McManus: That is right.

The Court: What further have we got for this gentleman this morning?

Mr. McManus: We have the letters, the personal letters that were written either by Mr. Cheney or to Mr. Cheney. I think there are 32 of them, -1 to 32.

The Court: 1 to 32?

Mr. McManus: Yes, your Honor, G-1 to 32.

The Court: Have you looked at these, Mr. Hughes?

Mr. Hughes: Yes, sir. I am generally familiar with them. Some are short and some are quite long.

The Court: Is there any generality that applies to them all or not?

Mr. Hughes: What are these offered for?

Mr. McManus: These are offered for the truth of the matter contained therein.

Mr. Hughes: Then I must object.

[fol. 2171] Mr. Handler: They concern statistics, references to surveys, facts and figures.

Mr. Hughes: At least a number of them do.

The Court: Let me ask you this: I notice in the first one it says, "I am enclosing for your information a letter received from the Continental Can Company regarding baby foods."

I do not see a letter from the Continental Can Company here. What was the point, that Obear-Nester got a letter from Continental Can Company?

Mr. McManus: Your Honor, these letters, when all tied together, we believe, will show that Continental Can Company was advertising and had used an advertising campaign—

The Court: I don't think we will start with that now. It is twenty minutes to one and we have 33 letters to go through. I think you might examine these letters and see whether there is any pattern and whether we have to go through this letter by letter, and whether you are in fact seriously offering these for all purposes. We will take this up at our next session.

Mr. McManus: All right, sir. Maybe we can withdraw some of them.

The Court: Yes, try to eliminate any material [fol. 2172] that is not essential to your position.

Mr. McManus: They might be covered by something else.

The Court: All right, gentlemen.

You may step down, Mr. Cheney, thank you. You will, of course, hold yourself subject to call when the trial resumes.

The Witness: Yes, sir.

(Witness excused.)

The Court: Yes, Mr. Johnson.

Mr. Johnson: I would like to make a brief statement which would dispose of this matter.

Your Honor will recall that there was some reference in earlier testimony to litigation between Hartford Empire Company and Hazel-Atlas Glass Company.

The Court: Yes, I am familiar with that.

Mr. Johnson: I would like simply to call your Honor's attention and to note for the record the reports of cases between these two companies, and, with your Honor's permission, I would just give the citations to the court reporter.

The Court: All right, give the citations to the reporter and let me have a copy of them. I think I have read most [fols. 2173-2291] of these and am quite familiar with them, in any event.

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 39 F.2d 111 (W.D. Pa. 1930), reversed, 59 F.2d 399 (3rd Cir. 1932).

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 125 F.2d 976 (3rd Cir. 1941).

"Hartford Empire Co. v. Hazel-Atlas Glass Co., 137 F.2d 764, (3rd Cir. 1943), reversed, 322 U.S. 238 (1944).

"Hazel-Atlas Glass Co., v. Hartford-Empire Co., 322 U.S. 238, rehearing denied, 322 U.S. 772 (1944)."